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WHO'S WHO IN THIS ISSUE

JOHN M. MAGWOOD

Commencing Nov. 1st, 1950, Mr. Magwood is senior partner in the firm of Magwood, Frith and Pocock, Toronto. After graduating from the University of Toronto Schools and the University of Toronto (where he obtained an Honour B.A. in Law in 1933), Mr. Magwood attended Osgoode Hall and was called to the Ontario Bar in 1936. In 1937 he received an M.A. and the following year an LL.B. degree from the University of Toronto. Since 1938, with the exception of the war years when he served overseas as a Major on General Eisenhower's SHAEF staff, Mr. Magwood has practised law in Toronto, latterly as a member of the firm of Rowan and Magwood.

STANLEY F. TEELE

Dr. Teele is Associate Dean and Professor of Business Administration of the Harvard Graduate School of Business Administration. Born in Somerville, Massachusetts, Dr. Teele took his A.B. degree from Amherst College and his M.B.A. and D.C.S. degrees from Harvard University. From 1930-31 he conducted his own restaurant business; from 1931-33 he was Research Assistant, Bureau of Business Research, Harvard Business School, and from 1932-33 Dupont Fellow in Marketing. Following two years in business with C. W. Young & Co., New York and Poor's Publishing Company, Dr. Teele was from 1935-42 at the Harvard Business School, first as Assistant, and then as Associate Professor of Marketing. From March, 1941, to December, 1943, he served successively as Consultant to the Director of Purchases, and Deputy Director of the Procurement Policy Division, War Production Board, Washington. Back again at the Harvard Business School as Professor of Business Administration and Associate Director of Research, Dr. Teele was appointed Associate Dean in 1946. His publications include "Department Leasing in Department Stores", Business Research Studies No. 4, 1933; "Expenses and Profits of Limited Price Variety Chains", Bureau of Business Research Bulletin No. 98, 1935; and *Problems in Retailing* (with M. P. McNair and C. J. Gragg), McGraw-Hill, 1937.

JOHN C. PHILPOT

Mr. Philpot is the Canadian Manager of BETRO, the British Export Trade Research Organization which carries out market research on a world-wide scale for U.K. exporters. Before World War II Mr. Philpot was a manager in the U.K. Purchasing Office of a Canadian engineering firm; and was later on the Geneva staff of Aluminium Limited. Born in Vancouver, Mr. Philpot took his M.A. at Oxford.

Who's Who in This Issue

GORDON H. TURNER

Dr. Turner is Associate Professor in the Department of Psychology at the University of Western Ontario. His B.A., M.A. and Ph.D. degrees were taken at the University of Toronto, 1935-39. During World War II he was associated with the Directorate of Personnel Selection, Canadian Army. For the past two years Dr. Turner has served as Secretary-Treasurer of the Canadian Psychological Association.

GILBERT HORNE

Mr. Horne is Professor of Business Administration and of Economics at Assumption College, Windsor. Born in Walkerville, Ontario, he received his early education in London and is a graduate in Honour Business Administration of the University of Western Ontario (1931). He has an A.M. in economics from the University of Michigan, and from February to August of this year was in residence there preparing to present himself as a candidate for a doctor's degree in Business Administration. During the summer of 1947 and during the year 1948-49, Mr. Horne was a Special Instructor in accounting at Wayne University in Detroit. He is a member of the following societies: Canadian Political Science Association, American Economic Association, American Accounting Association, Canadian Institute of International Affairs. This is Mr. Horne's fifth contribution to *The Quarterly*: three of his previous articles were on investment (1936-7), and the other (1940) on wartime investing.

JOHN M. HAMILTON

Mr. Hamilton is Assistant Professor of Business Administration at the University of Western Ontario. A graduate in Commerce from Queen's University, he received his M.B.A. degree from the Harvard Graduate School of Business Administration in 1949. From 1935-38 Mr. Hamilton was connected with The Dominion Bank, Winnipeg; from 1942-45 he served overseas with the Canadian Artillery; and from 1945-47 he was Junior Assistant Economist for the Canadian National Railways, Montreal. In the summer of 1950 Mr. Hamilton was employed by Canadian Industries Limited as assistant to their economist Mr. R. B. MacPherson. Mr. Hamilton's interest in the subject of his article springs from work he is currently undertaking as assistant to Dean Sipherd of Western's Business School in the formulation of a new course in Public Relationships and Responsibilities.

THE
BUSINESS QUARTERLY

The Law On Combines and How It Operates

John M. Magood
Senior Partner
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To what extent may combines in industry and commerce give rise to criminal prosecution? In this and the following Winter issue *The Quarterly* publishes a two-part analysis of a subject currently close to the hearts of businessmen.

Part I introduces background data and defines the problem. Here Mr. Magwood sketches the historical development of government regulation of business, tells how combine investigations in Canada begin and how the prosecution proceeds, and demonstrates the relationship between the Combines Investigation Act and the Criminal Code.

Actual cases are cited to show the varying interpretation which the courts place on the language of the Act and the Code; it is this inconsistency, Mr. Magwood believes, which makes it practically impossible for the Canadian businessman to extract a set of principles on which he can unfailingly rely.

THE QUESTION of the extent to which combines in industry and commerce may give rise to criminal prosecution, and perhaps affect the civil law of contracts and injury, is of widespread interest to businessmen across Canada and below the border. The complex, legal principles involved befuddle most practising lawyers, so it is little wonder that the businessman finds himself in difficulty when he endeavours to chart a safe course through the treacherous shoals that surround trade associations and agreements regularizing competition.

In reviewing the present position in Canada for the business reader, it will be the endeavour of the writer to avoid legal mysticism as far as possible, although it will be helpful to quote extensively from the body of case law which has been built up by way of interpretation of the English Common Law and the Canadian combines legislation.

A Brief History of Government Regulation of Business

Perhaps a little history of governmental regulations of business will not go amiss by way of introduction to our consideration of the situation as we find it to-day. Prior to the fourteenth century the mediaeval guild regulated in great detail both manufacture and the conditions of manufacture; and as well there was a good deal of detailed regulation of trade on a geographical basis through the agency of market and borough courts. Generally speaking, in this early period the parliament at Westminster took no interest in the matter at all. However, as a result of the Black Death in 1349, the depletion of the labour ranks, and a shift in the population to urban centres, the bonds of the guild and local and market courts were weakened and the state assumed the role of regulating trade. For example, the Statute of Labour dealt with conditions of employment; a number of statutes were passed dealing with such matters as coinage, weights and measures; and others were directed against disturbance of bargains, against confederacies to raise the price of goods, against unreasonable guild ordinances issued with a view to securing a monopoly of trade. In addition, many statutes were passed either to regulate prices to be charged for various commodities or to ensure the honest manufacture of such commodities. By the end of the fifteenth century legislation affecting trade and conditions of manufacture went into infinite more detail than similar legislation goes at the present time. The economic and social theory of the Middle Ages justified intervention by the state to secure honest manufacture, adequate skill in the producer, fair and reasonable prices and proper treatment of labourers engaged in production.

In the sixteenth and seventeenth centuries statutes compelling manufacturers to produce honest wares dealt with most of the important industries of the country. Thus, for example, statutes were passed regulating the cloth, leather, shoe, hat, worsteds, linens, upholstered goods, coverlet,

cable, barrel, pewter, wax, meat, feather bed and the dyeing and painting industries. An illustration of the length to which the legislature was prepared to go may be found in a statute of 1543 which enacted that "no one shall sell pins, not double-headed, with the heads soldered fast to the shank, well smoothed, the shank well shaven, the point well rounded, cauted and sharpened."

History tells us that governmental regulation of industry declined after the days of Charles I and the Civil War, and that the Commonwealth government abandoned the attempt of the Stuarts to supervise the quality of manufactured goods. With the development of foreign markets for English goods the doctrine of *laissez faire* came to be accepted and led in due course to the Industrial Revolution, the principle of free trade, and the theory that competition can be relied upon to provide an effective safeguard of the quality of goods manufactured and sold.

During the early part of the twentieth century preceding the first Great War, state control of industry rarely extended beyond prohibition of the use of deleterious substances in the interests of the consumer, and some restraints upon the effects of unfettered competition. During the Great War and World War II, on the other hand, the governments of both England and Canada controlled by Order in Council every conceivable aspect of the economy, although during the periods between the wars, and again following World War II, there was an abdication of most of these extraordinary powers by the government. However, the residuum remains and one wonders if we are to expect ever recurring national emergencies, or perhaps a continuing one, justifying further regulation of trade and industry. Even in the area of provincial and local government one finds to-day a vast body of legislation dealing with the marketing of natural products, industrial standards, milk control, licencing, and so on.

The Development of Combines Legislation in Canada

England's dependence upon foreign trade and the principle of free trade may explain the absence of combines legislation in that country, although the popularity of the co-operative there has led to the extensive development of combinations among those engaged in many productive and distributive trades. The development in this field in Canada, on the other hand, since the nineteenth century has been tied more closely to the situation in the United States. Following the mushroom growth of mergers and trusts below the border during the latter part of the last century, similar tendencies toward the development of monopolistic and heavily capitalized combinations in industry became apparent in Canada.

This transition from the era of small and independent manufacturers was in no small degree fostered by the national policy of Sir John A. Macdonald which smothered foreign competition and encouraged the

banding together of domestic producers in order to effect a more systematic distribution of their products. The inevitable result was the skyrocketing of prices and all its attendant evils. Popular demand resulted in the appointment of a Select Committee on Combinations by the federal parliament in 1888 with wide powers to inquire into the whole question. The statute that resulted was the first of a series of Acts of the Dominion parliament dealing with combines.

A detailed account of the development of combines legislation during the ensuing years is beyond the scope of this essay and of little interest to anyone but the legal scholar. At the present time we are concerned only with the Combines Investigation Act as amended up to and including the amending statute of 1949 and with Sections 496, 497, 498 and 498A of the Criminal Code. For our purposes in determining the position of the businessman in relation to combines legislation we are concerned with Sections 2, 4 and 39A of the Combines Investigation Act as well as the sections of the Criminal Code just referred to. These are quoted *in extenso* at the end of this article.

How Combine Investigations Begin

An investigation of an alleged combine may be instituted in one of three ways. Any six persons, British subjects, resident in Canada, of the full age of twenty-one years, may make application to the Commissioner to hold an inquiry, or the investigation may be directed by the Minister of Justice, or it may be initiated by the Commissioner himself. Upon preliminary inquiry, the Commissioner may, where he deems further inquiry to be unwarranted, decide to drop the matter; thereupon he reports his conclusions to the Minister of Justice with his reasons. The Minister, however, may overrule the decision of the Commissioner in this respect, either on his own initiative or upon the written request of the applicant, and he may then direct further investigation to be made by the Commissioner, or by a special commissioner appointed by Order-in-Council.

Leaving out of account an understandable lapse in activities during the years of the last war, an average of thirty-five or forty investigations have been held annually, and no doubt the number of complaints disposed of without a detailed inquiry would be far in excess of that number. In only eighteen cases has the Minister published the report of the Commissioner, this having been formerly a matter of ministerial discretion. Under the Act at the present time, the Minister must publish the Commissioner's report within fifteen days unless the Commissioner states in writing to the Minister that he believes the public interest would be better served by withholding publication, in which case the Minister may decide whether the report, either in whole or in part, shall be made public. It will be recalled that a recent dispute between the former Commissioner, Mr. McGregor, and the Minister of Justice as to a matter of publication led to the resignation of Mr. McGregor. The respective

arguments put forward in connection with that unfortunate occurrence are of course not a subject for discussion here.

The Commissioner, or, at his direction, one of his deputies, may at any time in the course of the inquiry require the filing of written statements upon oath showing in detail information concerning the business of the person requested to give evidence, and may require full disclosure of all contracts and agreements in which the person is interested. The Commissioner may also obtain access to premises and records, and order the examination of any person resident or present in Canada and the production of books, papers, records or articles. There is vested in him all the powers exercised by any superior court in Canada in respect to the enforcement of such orders, although only on the certificate of an Exchequer, Superior or County Court judge. In addition, the Minister of Justice may issue commissions to take evidence in another country and may make all proper orders for the purpose, and for the return and use of the evidence so obtained. The Commissioner may accept or require evidence upon affidavit and no person is excused from giving evidence or producing books, papers or records on the ground that he may thereby be incriminated.

In general, the Commissioner has all the powers of a commissioner appointed under the Inquiries Act. He may, with the approval of the Governor-in-Council, appoint such temporary technical and special assistants as may be required to meet particular situations that arise in the carrying out of the provisions of the Act, and may, when in his opinion the public interest so requires, apply to the Minister of Justice to instruct counsel to conduct the investigation before him. Proceedings under the Act are conducted in private, although the Commissioner may direct that any part or all of the investigation shall be conducted in public.

Steps in Combines Prosecution

Although the Combines Act prescribes a number of offences and sets out penalties, prosecution is not carried on at the instance of the Commissioner but follows the ordinary course in the regularly constituted courts of law. Where the Commissioner reports the existence of a combine, he may send his report, together with the evidence taken on the inquiry, to the Attorney General of any province within which the offence is alleged to have been committed. Alternatively, the Attorney General of Canada may institute a prosecution either under the Combines Investigation Act or under Section 498 or 498A of the Criminal Code. The Commissioner is not empowered to try an offender and inflict penalties provided for in the Act, nor order the dissolution of a combine, and the well-recognized right of a subject to adjudication of his rights by a court of law is retained. This is particularly noteworthy in the light of the much wider powers held below the border by the United States Federal Trade Commission. (In addition to exercising investigatory powers, the

latter body may, after a hearing, issue an order directing compliance with the law and on disobedience it may apply to the appropriate federal circuit court for a mandatory order. The circuit court must accept the Commission's findings of fact as conclusive, although the order may be set aside on a point of law.)

In addition to proceedings under the Combines Investigation Act, which must be at the instance of the Attorney General of Canada, or of one of the provincial attorneys general, proceedings may be instituted in the ordinary manner prescribed by the Criminal Code, by a private or public prosecutor, when an infraction of Section 498 of the Code is alleged, and with or without previous investigation under the provisions of the Combines Investigation Act.

Section 40 of the Patent Act provides a further remedy. Anyone interested in a patent may present a petition to the Commissioner of Patents alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied, and praying that the patentee be ordered to supply the patented article at a reasonable price or grant licences for the use of the invention upon reasonable terms. The Commissioner of Patents may himself conduct an investigation, or, with the approval of the Minister, may refer the petition to the Exchequer Court, and if the complaint is found to be substantiated, the patentee may be ordered to supply the patented article at fixed prices, or to grant licences upon terms as fixed upon pain of forfeiture of the patent. Similarly, wide powers in respect of patents and the control of their use are given to the Exchequer Court by the Combines Investigation Act where the patent is used in a manner that contravenes the Act.

Section 29 of the Combines Act provides that whenever as a result of an investigation under the Act, or of a judgment of the Supreme Court or Exchequer Court of Canada, or of any Superior, District or County Court, it appears to the satisfaction of the Governor-in-Council that a combine exists, promoting unduly the advantage of manufacturers or dealers at the expense of the public, and that this is facilitated by customs duties, the Governor-in-Council may direct either that the article concerned be admitted into Canada duty free or that the duty be reduced sufficiently to give the public the benefit of reasonable competition.

The Separation of Investigation and Prosecution

Certain criticisms may be levelled against the dual procedure of investigation and prosecution. It is suggested by some that, although a witness is given an opportunity to explain his situation, he is endeavouring to persuade his accuser, and that, by comparison with due process of law in an ordinary court, an unbiased picture may not in all cases be presented to the Commissioner. On the other hand, it must be remembered that the inquiry almost has to be informal in nature in view of the

volume of work with which the Commissioner and his assistants are required to deal, and in any event, the report of the Commissioner does not represent the final adjudication. It is submitted in this connection that the general principle of severing the inquisitorial and the punitive functions should be retained and that in this respect the Canadian system, which leaves the final adjudication to the ordinary courts, is greatly to be preferred to the system of the Federal Trade Commission in the United States where the functions of investigation and prosecution are combined.

Although the preliminary investigation must be conducted in private, the Commissioner may order that all or any part of subsequent proceedings be held in public. As a matter of fact, the policy of the former Commissioner, Mr. F. A. McGregor, was to hold all proceedings of every nature in private and to exclude the press, subject of course to publication of his Report. In many cases it is essential that the investigation be of a confidential nature in order to protect valuable trade secrets and industrial methods which might otherwise be unfairly placed at the disposal of trade rivals, and for this reason, and also in order to prevent a one-sided picture being presented to the public through the medium of the press, it is suggested that consideration might well be given to a statutory regularization of Mr. McGregor's policy in this respect.

It is unfortunate that our rules of evidence do not permit the submission of evidence by economic experts at a criminal trial. An offence under the Combines Investigation Act or under Section 498 or 498A of the Criminal Code is as much a problem of economics as it is a matter of legal culpability. Consideration might well be given to a statutory amendment recognizing evidence of this sort in prosecutions under the combines legislation.

The Relationship of the Act and the Code

We now come to a consideration of prosecutions in Canada based upon alleged violations of the combines legislation. In other words, we will examine the reports of the decided cases with a view to determining the extent to which the common law rule that a covenant in restraint of trade is not criminal has been varied in Canada by the Combines Investigation Act and by Section 498 and 498A of the Criminal Code. To begin with, since an amendment to the Act passed in 1935, it is now clear that a prosecution cannot be carried on under both the Act and the Code at the same time. Although the penalties set out under the Act are considerably heavier than those prescribed by the Code, only very slight differences if any can be found in the interpretation placed upon the two statutes by the courts. Perhaps the most noticeable difference from a grammatical standpoint is in the absence from Section 2 of the Act of the words "unduly" and "unreasonably" which appear in clauses (a), (c) and (d) of subsection 1 of Section 498 of the Code. But the courts

have held that these qualifying words must be read into the corresponding clauses of Section 2 of the Act by reason of the words "to the detriment or against the interest of the public" which appear in the last paragraph of that section.

Proceeding then upon the assumption that the statutes are practically identical in effect, a question arises about the purpose of retaining Section 498 of the Code upon the statute books: what is the utility of duplication? In the early days of the Combines Investigation Act before the constitutional validity of that statute was recognized beyond doubt, the Criminal Code section was retained as a constitutional safeguard, but since the P.A.T.A. case the answer to the question lies in the fact that there is a stigma attached to Criminal Code offences which does not adhere in the same measure to offences prescribed by other statutes; this operates as a powerful deterrent since the force of public opinion is regarded by many as a more important sanction than the penalties provided for by the combines legislation. In addition, it might be suggested that Section 498 of the Code would provide a mode of prosecution in local and comparatively unimportant cases which do not come to the notice of the administrators of the Combines Investigation Act, as well as in cases which are not considered to be of sufficient moment to warrant the institution of proceedings by the Attorney General of Canada or by the provincial attorneys general.

Court Interpretation of the Act and the Code

Let us now turn to an examination of the language of the relevant sections of the Act and of the Code in order to determine the practices to which they apply. As we shall see, the courts have no clear-cut appreciation of the economic principles with which the legislation deals. Each case turns primarily on its own facts, and an examination of the cases discloses that the judges do not weigh such specific fact as it is brought out in evidence against the various prohibitions enumerated in the relevant sections of the Code and of the Act. Rather, they would seem to be influenced by their feeling as to whether or not the sum total of the facts disclosed in each instance evidences an arrangement that is or is not in accord with the views of the court as to what is economically and socially desirable.

The writer submits that it is not possible to discern a thread of deliberate continuity of interpretation of the relevant sections from which we can hope to extract a series of consistent principles upon which a businessman can rely. Mr. S. F. Sommerfeld in the University of Toronto *Law Journal,* Volume VII, No. 2 (1948) argues with considerable force from an *ex post facto* consideration of the reported decisions that all other considerations are ancillary only to the two questions: (1) Is there a combination? (2) Does it or is it likely or designed to stifle competition?;

but the writer is of opinion that, insofar as the future is concerned, we cannot depend upon this simplified formula as having been established. We will have to pursue an analysis of the cases for the purpose of showing the shades of interpretation which the courts have placed on the language of the various sections under discussion. To do more in the confused state of the authorities, especially in view of the relatively small number of cases which have come before the courts, would not appear to be warranted by the state of the law.

The Test of Injury to the Public

We have seen that the courts regard the words "unduly" and "unreasonably" as they appear in clauses (a), (c) and (d) of Section 498 (1) of the Code as practically synonymous with the words "to the detriment or against the interest of the public" appearing in the last paragraph of Section 2 (1) of the Combines Investigation Act. Thus it was held in *Stinson-Reeb Builders' Supply Co. and Others* vs. *The King* that the proper test in a prosecution under Section 498 of the Code is the injury to the public by the hindering or suppressing of free competition, notwithstanding any advantage which may accrue to the business interests of the members of the combine. Anglin J's interpretation of the word "unduly" in *Weidman* vs. *Shragge* was quoted with approval:

> The prime question certainly must be, does the agreement, however advantageous or even necessary for the protection of the business interests of the parties, impose improper, inordinate, excessive or oppressive restrictions upon that competition the benefit of which is the right of everyone.

It was held in *Rex* vs. *Elliott* that the meaning of "undue" with reference to the acts which are the subject of a conspiracy, combination, agreement or arrangement is now a question of fact dependent upon the circumstances of each case. The effect of the section is that competition is not to be prevented or lessened "unduly", that is to say, in an undue manner or degree, wrongly, improperly, excessively, inordinately, which it may well be in one or more of these senses of the word, if by the combination of a few, the right of the many is practically interfered with by restricting it to the members of the combination. A combination of this sort will run foul of the Code even though the purpose of the members is to protect their business interests without the use of unlawful means (which might subject the members to indictment at common law).

The court said in *Weidman* vs. *Shragge* that the word "unduly" in the Code cannot be interpreted so as to be co-extensive with the word "unreasonable" as used in the common law cases on restraint of trade, especially since the history of combines legislation in Canada demonstrates that the statute was not directed against something already unlawful. It was said that no definite interpretation is to be found for the word "unduly", but the enhancing or lowering of prices, the variation thereof

without obvious causes other than the evil purpose the Act forbids, the margin or profit, the scale of business, the operative field, the frame of the contract, the devices used therein and in its execution, the refusal to deal with others without assigning any reasonable cause, the whole conduct of the parties and the results produced must each and all furnish some aid to determine whether or not the parties intend to violate the Act.

Clause (b) is the only one in Section 498 (1) of the Code in which the word "unduly" does not appear. Killam, C. J., in *Gibbons* vs. *Metcalfe* in interpreting the equivalent, superseded section of the Code, held that the section does not apply to prevent every enhancement of prices or every lessening of competition, for where enhancing, lessening or preventing is specifically referred to in the section it is qualified by the word "unreasonably" or "unduly"; and consequently subsection (1) (b) cannot well have been intended to embrace every combination to prevent or restrain particular kinds of systems of trading or particular kinds of bargains. At most it includes only combinations for the direct purpose of preventing or materially reducing trade or commerce in a general sense with reference to a commodity or certain commodities, or for purposes designed or likely to produce that effect.

In *Rex* vs. *Gage*, the court in effect read the word "unduly" into clause (b) of Section 498 (1) of the Code, and held that that clause relates only to those restraints which are not justified by any personal interest of the contracting parties, but which are mere malicious restraints, unconnected with any business relations of the accused; the court pointed out that it was unlikely that Parliament would in clauses (a), (c) and (d) restrict the classes of conspiracy in restraint of trade which are prohibited, while at the same time declaring (in clause (b)) that every agreement or arrangement which operates in restraint of trade should without limitation or qualification be a criminal offence. Although this reasoning was called in question in *Rex* vs. *Alexander,* it is submitted that it represents the generally accepted view as to the meaning of clause (b) of Section 498 (1) of the Code.

By way of summarizing the construction placed by the courts upon the words "unduly" and "unreasonably", the general statement might be made that all the prohibitions enumerated in the Code and the Combines Investigation Act are regarded as qualified to the extent that the practice complained of must be undue and unreasonable if sanctions are to be applied; and the same construction is placed upon clause (b) of Section 498 (1) of the Code, and upon the various clauses of Section 2 (1) of the Combines Investigation Act, although the words in question are not expressly included in those clauses. In order to be "undue" or "unreasonable" or "to the detriment or against the interest of the public", a given practice need not be unlawful in the sense of being in unreason-

able restraint of trade at common law; it is sufficient for the purposes of a conviction under the Canadian combines legislation if wrongful, improper, excessive or oppressive restrictions are placed upon the public.

The Combines Investigation Act

2. In this Act, unless the context otherwise requires,

(1) "Combine" means a combination having relation to any commodity which may be the subject of trade or commerce, of two or more persons by way of actual or tacit contract, agreement or arrangement having or designed to have the effect of

(a) limiting facilities for transporting, producing, manufacturing, supplying, storing or dealing, or

(b) preventing, limiting or lessening manufacture or production, or

(c) fixing a common price or a resale price, or a common rental, or a common cost of storage or transportation, or

(d) enhancing the price, rental or cost of article, rental, storage or transportation, or

(e) preventing or lessening competition in, or substantially controlling within any particular area or district or generally, production, manufacture, purchase, barter, sale, storage, transportation, insurance or supply, or

(f) otherwise restraining or injuring trade or commerce, or

a merger, trust or monopoly, which combination, merger, trust or monopoly has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers or others.

4. "Merger, trust or monopoly" means one or more persons

(a) who has or have purchased, leased or otherwise acquired any control over or interest in the whole or part of the business of another; or

(b) who either substantially or completely control, throughout any particular area or district in Canada or throughout Canada, the class or species of business in which he is or they are engaged;

and extends and applies only to the business of manufacturing, producing, transporting, purchasing, supplying, storing or dealing in commodities which may be the subject of trade or commerce: provided that this subsection shall not be construed or applied so as to limit or impair any right or interest derived under The Patent Act, 1935, or under any other Statute of Canada.

The following amendments are set forth in 1949 Chapter 12, R.S. Canada:

2. (3) Notwithstanding anything in the Criminal Code or in any other statute or law, a corporation charged with an offence under this Act or under section four hundred and ninety-eight or section four hundred and ninety-eight A of the Criminal Code, shall be tried without the intervention of a jury.

3. The said Act is further amended by adding thereto, immediately after section thirty-nine thereof, the following section:

39A (1) In this section

(a) "agent of a participant" means a person who by a document admitted in evidence under this section appears to be or is otherwise

proven to be an officer, agent, servant, employee or representative of a participant,

(b) "document" includes any document appearing to be a carbon, photographic or other copy of a document, and

(c) "participant" means any accused and any person who, although not accused, is alleged in the charge or indictment to have been a co-conspirator or otherwise party or privy to the offence charged.

(2) In a prosecution under section thirty-two of this Act or under section four hundred and ninety-eight or section four hundred and ninety-eight A of the Criminal Code:

(a) anything done, said or agreed upon by an agent of a participant shall *prima facie* be deemed to have been done, said or agreed upon, as the case may be, with the authority of that participant;

(b) a document written or received by an agent of a participant shall *prima facie* be deemed to have been written or received, as the case may be, with the authority of that participant; and

(c) a document proved to have been in the possession of a participant or on premises used or occupied by a participant or in the possession of an agent of a participant shall be admitted in evidence without further proof thereof and shall be *prima facie* evidence:

(i) that the participant had knowledge of the document and its contents;

(ii) that anything recorded in or by the document as having been done, said or agreed upon by any participant or by an agent of a participant was done, said or agreed upon as recorded and, where anything is recorded in or by the document as having been done, said or agreed upon by an agent of a participant, that it was done, said or agreed upon with the authority of that participant;

(iii) that the document, where it appears to have been written by any participant or by an agent of a participant, was so written and, where it appears to have been written by an agent of a participant, that it was written with the authority of that participant.

The Criminal Code

496. A conspiracy in restraint of trade is an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade.

497. The purposes of a trade union are not, by reason merely that they are in restraint of trade, unlawful within the meaning of the last preceding section.

498. Every one is guilty of an indictable offence and liable to a penalty not exceeding four thousand dollars and not less than two hundred dollars, or to two years' imprisonment, or, if a corporation, is liable to a penalty not exceeding ten thousand dollars, and not less than one thousand dollars, who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company,

(a) to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or

(b) to restrain or injure trade or commerce in relation to any such article or commodity; or

(c) to unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or

(d) to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property.

2. Nothing in this section shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees.

498A. Every person engaged in trade or commerce or industry is guilty of an indictable offence and liable to a penalty not exceeding one thousand dollars or to one month's imprisonment or, if a corporation, to a penalty not exceeding five thousand dollars, who

(a) is a party or privy to, or assists in, any transaction of sale which discriminates, to his knowledge, against competitors of the purchaser in that any discount, rebate or allowance is granted to the purchaser over and above any discount, rebate or allowance available at the time of such transaction to the aforesaid competitors in respect of a sale of goods of like quality and quantity;

The provision of this paragraph shall not, however, prevent a co-operative society returning to producers or consumers, or a co-operative wholesale society returning to its constituent retail members, the whole or any part of the net surplus made in its trading operations in proportion to purchases made from or sales to the society;

(b) engages in a policy of selling goods in any area of Canada at prices lower than those exacted by such seller elsewhere in Canada, for the purpose of destroying competition or eliminating a competitor in such part of Canada;

(c) engages in a policy of selling goods at prices unreasonably low for the purpose of destroying competition or eliminating a competitor.

In the Winter issue of THE QUARTERLY *Mr. Magwood discusses the legality of price-fixing and quality-fixing arrangements, the effect of combines laws on large corporate combinations, the legality of blacklisting, the legal status of trade unions; and concludes with some generalizations based on case interpretation.*

Thinking Ahead In Business Education

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Dr. Teele scans the future of university education for business and considers some of the problems and some of the developments of the next decade or two.

THE FIVE YEARS since the end of World War II have been most exciting years in university education for business. Under the influence of the G. I. Bill of Rights, enrollment in American universities grew tremendously as compared with prewar years. Typically, the business schools, most of them undergraduate in the United States, grew even faster proportionately than universities as a whole. In consequence, in most American universities the business school has climbed to be either first or second in numbers enrolled. As a result, these schools have become of major concern to university administrations. They have become too important to be allowed to go their own way, and therefore, in university after university there have been surveys, studies, and much soul searching as to the objectives and methods to be used in business education.

This surge in numbers is also, of course, of major consequence to businessmen. As a larger and larger proportion of the young men entering business do so after a university education in business, the character and quality of that education become increasingly important to the business community.

The Struggle to Define Objectives

While the picture is clear and entirely visible in terms of quantity, it is highly obscure in terms of quality. University business schools are still struggling to define clearly their objectives, their goals, and the best methods to be used in reaching those goals. This effort is not yet concluded and may well indeed not be concluded within the next decade or two, but most certainly progress can and must be made in the years immediately ahead.

What, for example, are the objectives appropriate to a university business school like that at Harvard? If such an institution is to have appropriate objectives, we can be certain that they will not be alien to the environment in which the institution finds itself but, rather, will be consistent with it. Therefore, it seems important first to mention briefly

certain long-run factors or forces which probably will continue and which are of utmost importance, if not dominance, in their effect on the community as a whole.

Long-Term Forces Affecting the Business Community

Many factors of substantial importance will be omitted here. One that is *not* being included may perhaps be mentioned briefly. Last April the Harvard Business School in cooperation with the life insurance companies of Massachusetts conducted a two-day meeting devoted to an examination of the factors likely to be of most importance to the life insurance companies during the next ten or twenty years. One of the major topics of discussion during that meeting was what several speakers described as "the geriatric revolution." "Geriatric" is probably a good word with which to become familiar since it will be used increasingly. It is the opposite of pediatric, meaning to be concerned with old age; and the geriatric revolution about which they speak is the prediction of the medical men that life expectancy in the immediate future will rise surprisingly. (The experts were talking about 85 years for 1970 and 100 years for the year 2000.) Even more important was the prediction of the doctors that not only would people live longer, but that they would enjoy it; that is, the geriatric revolution includes not only methods of keeping people alive, but also methods of controlling the diseases of old age.

Now, obviously, to our business community and to our society as a whole such developments will be of tremendous importance. They are not, however, of controlling importance as are the three factors dealt with below.

A "Laboristic" Business Society

First, we cannot ignore the consequences over the years ahead of the fact that in the United States four out of five people gainfully employed are on somebody else's payroll. Professor Sumner Slichter for several years now has been emphasizing this fact. He has dramatized it by describing our business society as laboristic rather than capitalistic. The attitudes and points of view, not only toward such immediate economic matters as wages and working conditions, but also toward broader economic social, cultural, and political matters, springing from the fact of employment by another rather than self-employment, are extremely powerful. The emphasis on security which so many bewail seems an almost inevitable consequence. The inability to link cause and effect stems from this relationship. The author is not for a moment advocating a breaking up of industry to provide many more proprietorships. However, ways of preserving the technological economies of our industrial organization and at the same time regaining individual mental and emotional habits seem greatly to be needed.

The Accelerating Rate of Technological Change

The second continuing controlling factor seems to be the rate of technological change. People of the last few generations have been forced to adjust themselves to more rapid and far-reaching changes in material conditions of life than was the lot of earlier generations. Not so long ago, historically speaking, a man could safely presume that his son would live his life under physical conditions not markedly different from those of his own lifetime. Today the only safe assumption is the exact reverse; namely, that the physical conditions of life will be notably different. For a very high proportion of the population of the United States, at least, the need to adjust thus has brought acute mental and emotional problems. Moreover, competent scientific observers predict that the rate of change will continue to accelerate during the foreseeable future. President Conant, for instance, both a distinguished chemist and experienced scientific administrator, points out that the kind of scientific development now occurring especially in the field of physics and electronics is of such a nature as to almost assure accelerated developments. The business administrator in the years ahead, therefore, will need to be accustomed himself to dealing with rapid technological change, and perhaps even more important, he will need to concern himself with helping those people associated with him in his enterprise to make such adjustments.

Continuing Pressure from Russian Communism

Finally, a brief treatment of the external relations of the United States (the third factor) is indicated here. (This topic will be discussed in another connection at a later stage.) In the writer's opinion, the United States' attitude toward Russian Communism should be developed along this line of reasoning:

1. The Communist creed demands ultimate conversion- of the world. Any temporary departure from that objective will be for immediate tactical reasons only.

2. On the other hand, the basic Communist doctrine predicts that the objective of world conversion to Communism is inevitable and that military efforts are unnecessary except in defense.

3. The present Politburo is made up of highly intelligent and ruthless men. One must assume that policies and actions are reasoned ones. They may still be wrong, but they are not the erratic moves of a Hitler.

4. Such an intelligent and ruthless group as the Politburo will not engage in open war with us until one or both of two conditions prevail:

   a. The conditions within Russia so threaten the domination of the small minority included in the Communist party or of the even smaller hierarchy within the party, that a foreign war is the best escape from those difficulties, or

   b. The odds are overwhelmingly in favor of a relatively quick and easy Russian victory.

5. Since the evidence available to an ordinary layman suggests that neither of those conditions now prevails, no direct and open conflict in the years immediately ahead is anticipated. On the other hand, since it is extremely difficult to see the end of the pressure of threatened action by Soviet Russia, it seems most likely that the problem presented by the antagonism of Soviet Communism will be a dominant factor in North-American life throughout the next decade or two.

Now, against this background of three major forces at work; namely, four out of five employees on another's payroll, rapidity of technological change, and the continued pressure from Soviet Communism, let us come directly to university education for business. Six lines of development will be incorporated in these remarks, but only one; namely, the crystallization of objectives appropriate to university schools of business administration will be dealt with at any length.

What Should Be the Objectives of University Education for Business?

When we question what the objectives of university education for business should be, we must bear in mind that we are now talking about goals idealistically: one, two, three, or even four years devoted to these goals can do no more than make a beginning of a development which typically takes a lifetime.

Developing Business Competence

The first and most important objective of the university business school must be to provide the opportunity for young men to develop themselves as potentially competent businessmen, to develop those skills and the knowledge which will help them keep the individual enterprises with which they are associated, solvent; more than that, to keep them genuinely profitable. The proposition that there is no shame in profits should be nailed to the mast. The shame is in being of so little use to society that society will not allow a profit to be made. It is not easy for the individual to develop these abilities, nor is it easy for the university to help. It is a big task, and should not be minimized.

There are many sets of words which can be and are used to describe the qualities and abilities which make for satisfactory performances in business. They may, however, be reduced to just three: first, the ability and the courage to make decisions effectively; second, the ability to work with people toward a common purpose; and, third, the ability to command the necessary specialized and technical facts. In the years ahead more and more effort will necessarily be expended by business administrators in trying to make the group of people associated with them what Dean David of the Harvard Business School likes to call "a good society." By that he means a recognition within the group of the old wisdom that man does not live by bread alone, that there must be many kinds of satisfactions beyond the purely materialistic. The business organization

must to an important degree provide the opportunity for these non-materialistic satisfactions.

Teaching Public Responsibility

Important as this first objective of the university business school is, it cannot be the only objective. Despite his loss of prestige in the United States in the last twenty years, the business leader remains one of the most important elements in the community, and this is necessarily so in a heavily industrialized civilization. Such a leader — and all the young men leaving university business schools should be thought of as potentially such leaders — must exert a profound influence on all important public matters. In the words of President Conant:

> "As never before, business needs men who appreciate the responsibilities of business to itself and to that unique society of free men which has been developed on this continent. Such men must understand not only the practical workings of business organizations, but also the economic and social climate in which business operates; they must be as well-trained as our professional men in law and medicine."

The kind of problem to which the business executive must give understanding attention has two notable illustrations: first, the relations between the United States and Canada; and second, the relations between the United States and Russian Communism.

Canada - U.S. Relations

Canadians typically know a great deal more about the United States than Americans know about Canada. There is abroad in the United States a highly romantic set of ideas about the great friendship between the two countries. There is a sort of vague impression that the 3,000-mile undefended border and friendly relationship happened automatically and was the inevitable consequence of a common language and common origin. Yet the history of United States - Canadian relations makes it abundantly clear that the present relationship did not develop automatically; indeed, it came only after many years of substantial conflict and as the result of the strenuous efforts of a relatively small number of leaders on both sides of the border.

The War of 1812 and the American Revolution left emotionally hostile attitudes in the New England States as in Ontario and the Maritimes. It took a considerable effort to overcome this emotional background, but it was made and was successful. On the economic side, in spite of a continuous tariff war between the United States and Canada from 1867 on, each has become the best single customer of the other. On the cultural and social side Americans and Canadians have come to understand each other even if they don't always approve of what they understand.

The relations between the two countries even today present a major challenge — and no reference is intended here to the political relationship. Some years ago in the course of upholding a statute of the state of Oklahoma Justice Brandeis of the United States Supreme Court made an observation to the effect that one of the great merits of the federal form of government was that it permitted experimentation with governmental devices. Individual states might appear absurd and ridiculous to the great majority of other states, but the experimentation can still be carried out with only limited risk. In even greater degree political separation between Canada and the United States may have this type of advantage. This conclusion, however, does require strenuous efforts to develop still more instruments for working together short of political union. The capacity and the interest in concerning himself with this kind of problem seems to be an important requirement for the business leader of the future.

Communist Russia - U.S. Relations

The second illustration of the kind of central problem for the informed and intelligent consideration of which the university business school has the responsibility for preparing its graduates is the longer-run relationship between the United States and Russian Communism. Problems of the utmost seriousness will constantly be developing even if we must not expect outright full-scale war. These break down to the consideration of, first, what should our objectives be throughout the world; and, second, what policies are best adapted to reaching these objectives. What should we do, for instance, when we have won the military fight in Korea? What is the longer-run consequence of our guarantee of Formosa? Obviously the latter arrangement is in a state of unstable equilibrium. On the one hand, the Nationalists in Formosa cannot long maintain on that island the army which they have there now without making aggressive movements toward the mainland. Will we support those movements? Nor, on the other hand, can Communist China long tolerate a hostile army so near its shores.

Difficult as such questions are, the military phase seems to be less difficult even than our nonmilitary role. Dr. Raymond Miller, a Visiting Lecturer on the Harvard Business School staff who is also active for the Food and Agriculture Organization of the United Nations, and who returned this year from his second recent study of much of Asia, dramatizes one point of view with the thought that "Most of the world's problems are rural." In explanation he writes:

> "A basic cause of most of the economic unrest in the underdeveloped areas of the world, where over 80% of the population is rural, is the fact that too little land is available for too many people because of inflexible hereditary vestments of title, or population pressures, the effects of which are inten-

> sified by unsuitable systems of land tenure. Land reform is a common denominator in every program for adjustment to modern conditions in underdeveloped areas."

To Americans in an industrial area of the world where the distribution of the population between rural and urban practically reverses those figures, the fundamental importance of land and land reform is hard to grasp. Consider, for example, most American discussions on "Point Four" of the President's program which calls for the export of American "know-how." Almost always American thought centres on industrial know-how whereas of much greater immediate (by immediate is meant the next generation or two) value would be the effective export of know-how in farming and food-processing generally.

Perhaps this will suffice to illustrate the fundamental problems, toward the solution of which business leaders of the future must be prepared to make substantial contributions. The working out of the best ways to do this will certainly be one of the activities of university schools of business in the years ahead.

Five other lines of development are likely to bulk large in the thought and effort of such schools in the future.

Other Probable Developments in Business Education

In the first place there would seem to be much attention devoted to developing new and better ways of teaching human relations in business. *Second,* there will in all probability be much experimentation in different types of adult education. The Advanced Management Program at the Harvard Business School, the Management Training Program at The University of Western Ontario, a somewhat similar program at the University of Pittsburgh, will be one type of such activity.

Third, perhaps closely related to point two, will be the development of closer relations between the universities and training programs within companies, particularly larger companies. It seems perfectly clear that many large companies can and should carry on for themselves most of the educational activities necessary or desirable within the business. Within the last six months Harvard has been carrying on discussions with one very large company, working toward a most interesting blending of within-company and university educational activities. The general lines of the discussion provide for the selection of two or three men a year from the company to be sent for the full two-year M.B.A. program at the School subsequent to the full within-company training program and three to five years of actual work experience with the company. There are some very exciting and promising aspects to this kind of arrangement.

Fourth, in the United States, at least, during these years ahead, there is going to be substantial effort devoted toward integrating the work of

universities generally, and university business schools particularly, with military training. The addition of a considerable period of military training to the career of a young man exerts heavy pressure on the School to find ways to shorten other periods of his educational activities. Met wisely, this pressure will not, in the author's opinion, be altogether undesirable.

Finally, the years immediately ahead will be marked for the university schools of business by the recognition both by them and by their friends in business of the very great need for a substantial increase in the emphasis on research. Much thought will be given to drawing the line between those types of research activities which can best be done within the individual business and those types of research which can best be carried out for business generally by different types of central agencies. Of these central agencies, the university business school should be one of major importance.

Summary

The rapid growth of business schools since World War II has pointed up the need for a clearer definition of objectives. Against a background of (1) a society in which four out of every five employees are on another's payroll, (2) an accelerating rate of technological change, and (3) continued pressure from Soviet Communism, these objectives emerge as the development of skills and knowledge for business competence and the orientation of the prospective business leader to the economic and social climate in which business operates. The next decade or two in business education will probably see considerable development along the lines of adult education, research, the teaching of human relations, the integration of military training with regular business studies and closer university-company co-operation in business training programs.

How Efficient Are Canada's Importing Agents?

John C. Philpot
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British Export Trade Research Organization

After outlining his viewpoint and the environment in which he judges the importing agent, Mr. Philpot describes those marketing functions on the performance of which the agent's efficiency is judged. Actual case histories illustrate various kinds of inefficiency; but Mr. Philpot's conclusion is far from pessimistic.

WE HAVE IT on exceptional authority that the small man can, if he has sufficient heart and skill, succeed in competition with the big man: "And David smote the Philistine, and he fell upon his face to the earth." This is encouraging, for the agent attempting to sell imports in Canada is often a David pitting himself in a marketing campaign against Goliaths of modern industry — the North American manufacturers.

The efficiency of importing agents may be judged from many different (even conflicting) view-points, and the view-point from which a verdict will be passed must be established before any evidence is presented.

The Businessman's View of Marketing

Economic activity is divided into four categories — primary production, or the extractive industries; secondary production, or manufacturing and processing; wholesale trade; and retail trade. To the economist, marketing is part of production and the economist recognizes that the wholesaling[1] is, in the words of Adam Smith, "essentially necessary either to the existence or extension" of the other three economic activities, or to the general convenience of society." To the greater or lesser extent that importing agents — *in toto* — aid desirable distribution (in an economic sense), they will be judged by the economist as more or less efficient.

The manufacturing businessman, however, is likely to judge from a narrower view-point: he is inclined to judge importing agents by the degree of proficiency with which they perform all, or some, of these

[1] In this sense, the economist would include in the term 'wholesaling' the sales of goods not only to retailers, but also to industrial consumers and to wholesale organizations, so long as the purpose of the customer in purchasing such goods was not that of personal gratification.

functions of wholesaling which must be performed efficiently in order to sell the manufacturer's own particular products. Furthermore, in some trades there is a tendency for manufacturers to assume the functions of wholesalers, and of wholesalers (including importing agents) to assume some of the functions of retailers: in these trades, the businessman will judge importing agents not only by the efficiency with which they perform their traditional functions, but also those retailing functions which he himself considers it desirable that they assume.

The efficiency of importing agents will here be judged as it would be by a businessman, rather than by an economist.

Types of Importing Agents

There are as many different types of importing agents as there are degrees to which the agent is identified with the exporter. The exporting manufacturer's salaried representative in an overseas market is fully identified with the manufacturer; not so fully identified is the commission agent; and at the other end of the scale are the importing retailer and the importing wholesaler (both taking title to the goods) and the confirming house who fully preserve their identity and work almost entirely on their own and their customers' account. Yet all five types of importers are often grouped under the omnibus title "Importing Agents". Furthermore, it is almost impossible to assess their importance relative to one another, though it may be guessed that the outstanding importing initiative of the chain department stores makes a contribution to the ranks of Canadian importers which is not paralleled in many, if any, other markets of the world.

It is interesting to note that importing merchants are particularly important in the automotive equipment trade, the coal trade, the fruit and vegetable trade and in various sub-divisions of the wholesale textile trade; import agents, brokers and manufacturers' agents in dry goods and apparel trades, farm products (raw materials), groceries and food specialties, and machinery equipment and supplies.

The Traditional Functions of Importing Agents

The major functions which a manufacturer selling overseas in world markets would require importing agents to perform are relatively simple to list. He would normally expect the agent to introduce business, to advise on export packing and documentation, and on routing through specific ports of entry; he would expect the agent to take responsibility for customs clearance and conformity with local legislation and excise duties; also the acceptance of goods in bulk and the redirection of internal shipping units to local customers. He would expect the agent to assume some or all of the financial burden necessary to complete the transaction — at very least to accept a *del credere* clause; and in general he would expect co-operation in the use of the mechanism of overseas trade.

A manufacturer of relatively simple consumer goods; *e.g.* men's handkerchiefs, would probably expect his agent to perform at least these functions. On the other hand, the manufacturer of less simple consumer goods or of producer goods, or of goods (such as pharmaceuticals sold to manufacturing druggists) destined to bulk consumers, would modify the list somewhat and would probably add to the list of agents' functions. In such cases as the sale of automobiles or of weaving looms, not only a product but also a service is sold. The consumer demands a solution to his automotive problems or to his weaving problems and is willing to pay for the solution — and not willing to pay for a product alone which, without service, might fail to continue solving his problem. So, to the list of major functions would be added those of rendering the consumer technical advice, service and available spares.

Effect of the Marketing Environment on the Performance of These Functions

The difficulty of performing such functions is directly related to the general marketing conditions in the country of import. From the Gold Coast comes a case which will illustrate how relatively simple the performance of these functions can be in certain countries. In 1946, a native importer noticed that a certain type of perfume was being sold profitably in Takoradi. At that time the perfume was arriving from Egypt, although it was manufactured in Britain. The importer contacted the manufacturer, arranged for direct shipments, and he himself sold the shipments to the three retailers in Takoradi who had been selling the long-routed bottles. By securing direct shipments he could not only sell the product at a lower price, but could serve his own interests by securing a commission for himself and serve the manufacturer's interests by putting the brand in a better competitive position.

In this case, the importing agent performed those functions which the manufacturer would have demanded of him; the businessman would therefore judge him to be efficient. The performance of these same relatively simple functions would not have been sufficient in many other markets of the world and the businessman's verdict on the agent might well be reversed had the agent — in another country with a more competitive market—restricted himself to the performance of these functions only. The case in the Canadian market will serve to illustrate this change of verdict.

The Canadian Marketing Environment

In 1948, two years after the Gold Coast case, a Canadian importing agent decided to import exactly the same product — a perfume — into Canada. Before the product could gain reasonable distribution in the Canadian market, over $200,000 had been spent in sales promotion. The best use of each spending dollar had been carefully considered and the

figure of $200,000 can therefore be used as some yardstick of the effort that went into one function of marketing the product in Canada, and of the unusual complexity of the problems which may face agents importing into Canada.

Importance of Factors Other Than Price and Quality

The Canadian consumer market is a far cry from the market referred to in the Victorian principle of trade: "buy in the cheapest market, and sell in the dearest market" — a principle based on the supreme importance of the price factor. In the modern Canadian consumer market, other factors compete with those of price and quality; branding and possession of consumer allegiance, and possession or partial control of channels of wholesale and retail trade can be of overwhelming importance.

In 1949, the exporting manufacturer of a particular optical product found it was virtually impossible to sell his product in Canada. Both the price and quality were attractive, but the wholesale and retail channels of trade were not prepared to handle the product for various reasons, unconnected with price and quality, but directly connected with branding.

The optical exporter and his importing agent provide a fairly typical case. They found that in Canada many of the functions of importing were relatively easy to perform, particularly those of shipping to points of entry, clearance of customs and compliance with local legislature, and that these were speeded up by a more than usually competent Civil Service and by the business efficiency — above the average in many other markets — of shippers, customs brokers, and the like. However, they found more than average difficulty in attempting to perform the remaining functions — those pertaining to getting the product into the hands of the final customer through the wholesale and retail channels.

The phrase 'wholesale and retail *channels*' has been used: this is a common business phrase but it is a misleading phrase for the very reason that these are not channels in the sense of river channels which accept any flow — however great — which the watershed presents to them. The 'channels' of trade do not and cannot accept an unlimited inflow; they are much more akin to pipe lines, down which only a limited volume can flow. This volume can be increased, it is true, by an efficient fluid and by pumping stations, both impeller pumps at the feeding end and expeller pumps at the receiving end. Pumping is just what can be (and often must be) done with the trade pipe lines: a product must be pushed in by the salesman's insistence and drawn out by consumers' demand.

It is essential to grasp this concept of the channels — or rather the pipe lines — of trade in order to understand marketing in Canada today.

Forcing New Products Through the Trade Pipe Lines

Another case which illustrates the difficulty of getting a product into the lines of distribution occurred in early 1950. The British director of a very old established and flourishing Midlands firm making needles paid a visit to Canada to appoint an importing agent. The director found that one of his competitors in Europe would be his biggest competitor in Canada. This was encouraging news because the director knew that his own product was of slightly better quality and considerably lower priced than that of the competitor. He was in this 'favourable' position, he explained, because his firm concentrated all their efforts on making needles better and cheaper than anyone else — a policy which would have delighted the Victorian businessman. It proved, however, a costly policy in present-day Canada: no importing agent would handle the Midlands line unless the director could guarantee to underwrite most of the costs of a sales promotional campaign designed to force distribution by creating consumer demand for the (yet unbranded) Midlands needles. His competitor's products were already in the pipe lines and it was estimated that nothing short of a consumer advertising campaign could knock them out and thereby make room — in sufficient volume — for the Midlands needles.

Another and larger illustration of the greater complexity of marketing functions which the Canadian importer faces is the present situation in Saskatchewan. By and large the consumers in this province wish to buy British (providing of course that the products are suitable and the prices not unreasonable). The consumers are aware that to sell a bushel of wheat they must buy $2 worth of U.K. products; hence their willingness to buy British. The U.K. exporters, on their side, are eager to supply these customers; and it can be assumed that many hundreds of their products are suitable for the market and reasonably priced.

There is, however, little available space in the lines of distribution through which the exporter's products can flow to the consumer. The existing importing agents, wholesalers and retailers already have a balanced line of products to sell; and in taking on a 'new' U.K. product, they would have to 'squeeze' an extra product into their balanced lines, throw out a product or a brand which was already flowing, or expand their field of operation. Few 'new' products are so attractive to the Canadian market as to make it profitable for a trader to undergo the reorganization of his present selling. The vast majority of 'new' products are, therefore, never even offered to the final customer.

This is a situation which is encountered in other markets, but which in Canada assumes a greater acuteness and which, therefore, puts an unusually heavy burden on the shoulders of agents (and their principals) importing into Canada.

Business Objectives of Exporters and Importing Agents May Differ

What are the objectives ordinarily in the minds of exporters to this market? Common amongst them is the desire to achieve a greater volume of world-wide trade, coupled with a preparedness to produce in greater volume; to achieve greater stability within this trade by entering another market and thus diversifying their world markets; possibly a desire to sell a surplus of production over current orders by seeking business in a new or expanded market. In the case of the U.K. exporter, it may also be a desire to practise sound economics by attempting to help in balancing dollar-sterling trade, even if this entails initially the loss of some other (soft currency) market.

The exporter's objectives may be long-term (in the case of U. K. exporters they often are) or they may be a short-term desire to maximize current returns, even at the expense of future security in the market. An illustration of exporters faced with the need for a decision between short and long-term objectives in Canada is provided by the Scotch whisky industry. They have apparently decided to maximize current returns by maintaining the highest prices at which the market will buy the volume the distillers now wish to sell. They are undoubtedly aware of the potential threat to their security in the market which the maximization of current returns may entail, and they probably consider that, as soon as they can overcome supply difficulties, the remedy — a lowering of prices and broadening of the market — is in their hands. In this way they are probably attempting to strike a balance between their short and long-term interests.

Importing agents will hold more or less the same objectives according to the degree to which they identify themselves with the exporter. Agents, however, more commonly accept a short-term objective, and are seldom so closely or so long identified with one product or with one brand that the long-term security of the market is as essential to them as it can be to the manufacturing exporter.

The interests of the exporter and those of the importing agent are seldom entirely identical; in fact the business objectives of the agent are likely to be not only shorter-termed but also inclined towards the maximization of net profits by seeking the easiest rather than the most numerous sales.

Case Histories Illustrating Non or Partial Performance of Specific Functions of Marketing

The necessity of forcing distribution; that is, of introducing a product into the lines of distribution, and the unusual difficulties encountered in Canada of achieving this ditribution have already been mentioned. Some new evidence on the behaviour of exporting principals and on the

agents importing (or offered) products, the sales of which would be secured initially only by introduction to the lines of distribution, or the sales of which could be increased only by further use of such lines, is available in the following case histories.

Tactical Functions

(1) Exporters A and B each made a household dye. In an anonymous product test, A's product was rated by consumers as definitely more satisfactory than B's. It was offered to an importing agent on the same terms as B's dye: the agent refused it and took B's. He stated his reason for doing so was that, while A's dye as a product was more satisfactory to the consumers, B's brand name was already known, not only to the consumers, but to the trade, and B's brand was already in the lines of wholesale and retail distribution.

(2) X is a firm of importing distributors of earth moving machinery in the Maritimes. The firm was offered a franchise for a British line of shovels and dump trucks, which were suitable in performance and attractive in price. The firm refused the franchise on the grounds that they had in the last thirty years been cut off from their European suppliers for more than ten war years. The business could not afford a shortage of supplies at any time and least of all in wartime when demand for this equipment was at its peak. The firm, therefore, decided to retain a franchise for this type of equipment from a supplier who could not offer them such an attractive proposition in peacetime but who could continue to supply in wartime.

(3) D had imported a branded line of men's hats from the same manufacturer for over thirty years. The hats were a high priced specialty line and by selling them to a restricted (and exclusive) list of retailers in the larger cities, the importer had in the past been able to secure a reasonable share of the market, and at the same time to keep his selling costs low. When asked by his principal to increase sales even if this entailed less exclusive distribution, the agent refused. He refused also a suggestion that he should distribute not only to the ten largest cities (which thirty years ago might have been sufficient), but also to at least the thirty towns in Canada in which it might be supposed there was now resident an income group of men perfectly capable of becoming customers. The agent considered that he had maximized his sure net profits and minimized his outlay, and he was unwilling to disturb this balanced state of affairs, even to achieve the greater volume desired by the principal.

(4) The importing agent of a large textile mill was for years asked to introduce orders not only for shirting materials, which could be sold conveniently to a handful of makers up, but also for piece goods of the type bought by women for making up at home, and which are custom-

arily sold in haberdashery, department, specialty and general stores. The agent on no occasion in fifteen years had secured entry into the lines of distribution for piece goods: yet within three years of their introduction (by the manufacturer's special sales representative) into the lines of distribution the piece goods became more important than the shirtings as a source of profit to the agent.

(5) For several years, an importer of automotive supplies (of a type which almost any garage in Canada would be at liberty to sell) confined sales to the town in which his business was situated. The agent held a franchise for the whole of Canada and yet he did not undertake the organization of a distributive system which, in view of the ease with which sales were made in his own town, would almost surely have resulted in a vastly increased volume of sales. This increased volume was desired by the manufacturer, and will now probably be achieved only by the manufacturer himself undertaking to introduce his products into the lines of distribution which serve the rest of Canada.

(6) P was an importer who had good business connections in the Canadian mining industry. After negotiations, he received a franchise for the whole of Canada from an exporting manufacturer of wire rope. P sold to the mining industry coast to coast, but he did not sell to the lumber, farm or shipping industries, each of which provides an important part of the market for wire rope. The result was that the manufacturer's ropes were distributed to a single industry which in itself formed only part of the total market.

(7) K was a manufacturer's salaried representative in Canada. He was selling a line of hardware and, being new to Canada, did not recognize the importance of the traditional price structure of the market. In his first year, he therefore offered an identical line to the department stores, the large chain stores, and to the wholesale distributors on exactly the same terms. In the second year, he discovered that the lines of distribution through the wholesalers were closed to him because the small retailers to whom the wholesalers sold had been unable to sell the line at a normal profit, because of the competition of the other stores.

The seven cases cited above are all illustrations of the non or partial performance of a certain marketing function. In each case, the function had to be performed in order to achieve the business objectives of the exporter and the fact that the function was not satisfactorily performed indicates a certain business inefficiency, though whether that inefficiency can be laid at the door of the exporter or of the importing agent is a moot point. It depends entirely upon the agreement between the exporter and the importing agent on the division of duties; though in cases where this division was not explicit, it can be assumed that the exporter implicitly assigned these duties to the importing agent. If, in such circumstances,

the duties are not performed by the agent, the exporter — as a businessman — will pass a verdict of inefficiency upon the importing agent.

Strategic Functions

A few other cases will illustrate the non or partial performance of marketing functions which can be considered as strategic rather than tactical. The cases deal mainly with unsatisfactory performance in such matters as planning an overall campaign by which to achieve agreed business objectives, failing to keep such campaigns up to date with socio-economic changes, and in general failing to plan a campaign which is realistic in the current circumstances of the market.

(1) A is an importer of fire extinguishing equipment, suitable for placing in large buildings (barracks, factories, offices, hospitals, etc.) and in small buildings such as houses. He imported the equipment from Britain (where it played an important part in fighting the fire raids during the war) and in its primary duty of putting out fires the equipment was outstandingly successful. Furthermore, products built to a similar standard had been accepted by the Canadian Armed Forces as suitable for their exacting demands. However, sales to civil users in Canada were greatly limited because the underwriters' laboratories which test such equipment for use in Canada withheld their seal of approval from all equipment built to this standard. Undoubtedly the laboratories were acting in good faith, but it seems reasonable to suppose that their refusal to approve of the equipment is arguable from a technical aspect. In this case, neither the agent nor his principal planned or conducted a thorough campaign to ensure the obtaining of such an approval, and they have been generally precluded from perhaps three-quarters of their potential market.

(2) Z, thirty years ago, annually imported a considerable amount of flax canvas. Yet, in 1948, his imports were so small that he dropped the agency. An investigation showed that the market as a whole had become predominantly a cotton canvas market; for various reasons consumers were buying a canvas which was cheaper in initial purchase price but which, in many cases, would prove to be more expensive in the long run on account of its shorter life expectancy. The importing agent (or his principal) had not recognized these changes in consumer buying habits at the early stages, and had done little or nothing to educate the potential customers to recognize the sound economy of paying a higher initial price for a longer lasting product.

(3) M is a distributor of bakery products, who was offered the Canadian agency for an imported piece of machinery of a type used by virtually every bakery in Canada. He accepted this particular agency because preliminary enquiries led him to suppose that the product, being smaller and more compact and lower priced than its competitors, could

achieve a fairly reasonable volume of sales in the near future. The preliminary enquiries undertaken by the agent were not, however, extensive enough to warn him that the larger bakeries had themselves incorporated revolutionary modifications to this type of machinery. Not having this information, the agent missed the golden opportunity of demanding that the modification should be made standard on the imported product (a modification which was neither patented nor difficult to incorporate). Had the modification been incorporated on the imported machinery at the time that it was first offered in Canada, a much greater share of the market would have been obtained.

The three cases cited above all illustrate shortcomings in the planning and conduct of the overall marketing campaign, but whether the blame should rest with the importing agent or with the exporting manufacturer again depends on the explicit or implicit agreement as to division of duties. However, it is only fair to point out that the duty of planning and supervising the conduct of an overall campaign is more and more frequently being assumed by the manufacturers themselves.

The following cases are quoted to illustrate another fairly common shortcoming in the strategic, rather than in the tactical, marketing campaign: they deal mainly with the failure of the importing sales force to understand technical potentialities of the imported product.

(4) Prewar, C imported a bottled and branded pharmaceutical product. Before 1939 the brand could successfully stand technical comparison with its competitors. However, during the war the competitors improved their product very substantially by fortifying it with various vitamins. After the war, and as soon as supplies were again available, the importer put the imported article on the market again. Unlike its competitors it had not been fortified, and in a matter of months it lost its trade reputation for high quality and its consumer allegiance. The agent advised his principal to withdraw from the market completely. The principal was wise enough not to accept this advice in its entirety, and having understood the failure of his bottled and branded product, took steps to modify his bulk supplies by addition of the required vitamins; this enabled him to return to the market with a product which was suitable in every way, and being offered on the market in bulk and unbranded, it avoided the stigma attached to the branded product. In this way he was able to regain a considerable part of his lost market.

(5) S was an agent who imported, among other articles, towels. He had good connections among the wholesale and retail buyers, and was generally well considered in the trade. A few years ago, a consumer demand arose for certain colours which the exporting manufacturer warned his agent were 'bleeding' colours. The manufacturer refused to supply them. On this refusal, the agent terminated his agency agreement and obtained supplies of towels in these colours from another

source. The principal sought another importing agent in vain; the potential agents he contacted refused to handle his products because they knew that an outstanding agent had just dropped them. The misfortune in this case is that the manufacturer was proved technically right and it is likely that had the agent trusted the manufacturer's technical information, or had he himself had sufficient technical understanding of the product, he could have passed on the warning of 'bleeding' colours, and might well have enhanced the trade's opinion and acceptance of himself and of his principal by refusing to supply products which could not perform efficiently.

(6) A large and well established firm of food wholesalers and importers handled many products which were sold for use in the housewife's kitchen. It was noticed that sales of a particular product were not holding their share of the market; the importing agent informed the manufacturer that the disappointing sales were the direct result of the imported product's being too highly priced. He informed the manufacturer that the competitor's package sold at 35 cents retail, whereas the manufacturer's sold at 49 cents. The packages were of equivalent size. The manufacturer followed his agent's advice by cutting his profit in order to reduce the price. A later investigation revealed, however, that the manufacturer's product was much more highly concentrated than that of the competitor and that it might have been quite sufficient to dilute the manufacturer's product to an equivalent extent and thus put the product in a demonstratively competitive position; at the same time net profits, both to the principal and to the agent, might have been maintained.

These three cases illustrate a certain degree of business inefficiency and it would probably be the concensus of opinion that any blame would attach more to the agent than to the principal, although the principal could in each case have avoided the inefficiency by following the modern trend to assume a general supervisory responsibility for the sale of his product to the final customers.

Two Variable Factors Influence the Importing Agent's Efficiency

Among the numerous factors which influence the performance of importing agents in carrying out the functions often expected of them by exporting manufacturers are two in particular whose importance is commonly underestimated. These are specifically *the stage of the marketing campaign,* and *the sales methods to which the actual consumers of a product are currently conditioned.* No verdict on the efficiency of importing agents should be passed unless the influence of these two variable factors has been duly recognized.

The most difficult stage of a marketing campaign is the stage at which the product has to be introduced into the lines of distribution. As has already been noted, it is usually much more difficult to introduce a

product into the lines of distribution than to expedite a product already flowing in such lines. It must also be remembered that in the introductory stages the profit to be made by the agent on many products is so small that the agent cannot rate the product as an important income producer: it is, therefore, quite possible that the importing agency will be attending first to the income producers and only secondly to the 'new' product.

Unfortunately, it is just in these introductory stages that a product needs more — not less — attention than it will probably need when it has once been made into an income producer. The initial introduction may have been established in the 'wrong' industry, the 'wrong' area, the 'wrong' set of wholesale or retail outlets. In any of these cases the early results of testing the opposition and the market may not be indicative of results which would be obtained later if the effort were continued or attempted in other distribution lines of the same total market.

Naturally enough, the importing agent is likely to restrict his efforts if the results from the first attempts at introduction are disappointing. The agent can cast around until he finds an alternative product or brand that promises better; often he abandons the 'slow starter' completely.

From the exporter's point of view, the agent's decision produces a calamity which he must either accept or rectify. If the manufacturer decides to rectify it, he can take over command of operations until such time as the probable success of the product is evident, when he may again be able to hand over the day-to-day (tactical) handling to an importing agent.

The second variable factor is the sales methods in use in the actual market, which will, of course, largely depend upon the type of product in question. There is a considerable range of products for which a profitable share of the market can be won and held only by initiating and continuing a tremendous sales offensive. This offensive demands the use of every weapon of modern marketing and it is seldom that an importing agent will accept the total responsibility, and even if he does accept it, will perform it satisfactorily. Among this range will be found such products as cosmetics, patent medicines, foodstuffs (breakfast foods, sauces, canned goods), men's and women's accessories, (studs, cufflinks, buckles), provided that these articles are branded and intended to be sold to the volume market. Also in this range will be found such diverse products as shoes, optician's supplies, automobiles and automotive supplies, where the retail outlets are accustomed to handle lines from one, two or three suppliers only.

The competition is usually strongest and fiercest in the volume market. No competition is fiercer than that for the market for household soaps and detergents, whereas the ferocity of marketing gradually de-

creases as the overall size of the market diminishes, where the market is a specialty market, or where specifications and quality of product sell the product more and the marketing methods sell it less.

As a corollary, it may be supposed that importing agents are at their most efficient (in a business sense) when they are importing a product (or products) which can secure a profitable share of the market without the full or continuous use of the whole battery of modern marketing methods. Other features of the product might be that its total volume of potential sales could not repay the undivided attention of an individual importing office; that its volume of sales fluctuated seasonally; that its technical nature did not preclude efficient importing and selling by a 'layman' or by a technician who was out of personal touch for long periods with the manufacturers; that the nature of the potential market was evident or readily ascertainable and was relatively stable; that its volume of sales depended largely on the day-to-day business efficiency of its handling; that the accessory services such as financing and servicing were not beyond the scope or resources of a relatively small business (and it is generally true to say that the importing agent is a David rather than a Goliath), or of the specialists economically available to such a business; and that a large missionary or educational campaign was not necessary.

Conclusion

Modern Canada is a country of which Adam Smith himself might have approved: a country whose international trade is so organized that the economist can have his pound of flesh, and the businessman the blood which we are so often told he seeks. It is a country where the government policy is not to consume all that it produces, nor to produce all that it consumes. In 1948, it consumed nearly three thousand million dollars of imports which it had not produced; and this creditable state of affairs was engineered by the overall efficiency of the generality of Canadian importing agents.

A Factor Limiting the Effectiveness of Supervisor Training

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Recognizing that management is frequently disappointed in the results of supervisor training programs, Dr. Turner suggests that less attention be paid to imparting knowledge and technical adequacy and more to mental health as a criterion of selection.

IT HAS LONG been recognized that an important, if not the most important, aspect of a supervisor's training is in the area of human relations. Such training is concerned with the techniques of managing men, and its chief purpose is to improve the supervisor's ability to deal effectively with the employees under him. Moreover, much experience has been gained in the conduct of training programs in this area. Guides are available which not only set forth aims and describe various methods of training but also provide detailed outlines covering almost every conceivable facet of the problem. Such courses of training are frequently extensive and generally sound. But how effective are they?

If the criterion of effectiveness of a training course were the degree of enthusiasm shown and expressed by the participants, it is probable that few courses would be judged to be unsuccessful. But if, on the other hand, the criterion of effectiveness is the increase in production or the extent to which the attitudes of employees are favourably altered or the extent of the reduction in complaints, absenteeism, or spoilage, then the results may be definitely disappointing. It is more than likely that a review of the effects some weeks or months after a course has been given will probably lead management to conclude (a) that the supervisors enjoyed the course and sincerely felt that it was most helpful and worthwhile, (b) that the good supervisors are still good if not in some cases definitely better, and (c) that the poor supervisors, while in some cases possibly better, are still poor. The stubborn and disappointing fact is that poor supervisors seldom show sufficient improvement to bring about a reclassification as good. And this fact constitutes one of the chief limitations on the effectiveness of such courses. The question is, why?

It is suggested that the answer will be found in the personality differences between good and poor supervisors, rather than in differences

in experience, technical competence, or even knowledge about human relations.

Knowledge About Vs. Ability to Do

The tendency to accept "knowledge about" as a criterion of "ability to do" is both understandable and deplorable. It is understandable because, in the main, the two are intimately associated. Most individuals who are skillful doers are also knowledgeable about the area of their skill. But the tendency is deplorable because there is no necessary association and there are so many instances in which one is found in the absence of the other that the criterion is quite unsatisfactory. Skillful persons may lack knowledge and knowledgeable persons may lack skill. Recognition of this is important but it should not lead to the easy conclusion that therefore knowledge about a subject counts for nothing. It is merely that knowledge about human relations is not as important as some of us have been inclined to think.

The same unfortunate tendency to confuse knowledge and doing bedevils our thinking in other areas as well. We are faced with essentially the same puzzle. Why is it that children can be trained very successfully by parents who have little or no systematic knowledge about child psychology while, on the other hand, children can be trained very poorly by parents who know a great deal about child psychology? Or why is it that knowledge about theology or religion or ethics may be possessed by a person of undesirable character? Obviously knowledge may be very helpful but it is by no means sufficient. The question we have to consider is why knowledge is so often ineffective in bringing about desired changes.

Knowledge that fails to change unsatisfactory attitudes and feelings will invariably be ineffective. Some supervisors may be poor chiefly because they lack technical competence or experience and they may be expected to benefit much from training courses. But many poor supervisors are not unsatisfactory for these reasons. They may be known to be competent and to be following conscientiously and to the letter the innumerable "do's" and "don'ts" of sound personnel management. Yet mysteriously, but undoubtedly, they do not manage men well. And the secret is to be found in their own personalities; in their characteristic attitudes and feelings.

The Difficulty of Disguising Feelings

The difficulty about feelings is that they are exceedingly difficult to disguise. A person in anger may inhibit gross expressions of anger, may control his gestures, and carefully select his language, but the truth will out none the less. The subtler signs are unmistakable even to a child. And what he doesn't say and do is just as revealing as what he does. The supervisor with feelings of hostility will engender hostility. Those whose

inadequacies drive them to feel superior will, perhaps subtly but surely, treat others as inferiors and engender resentment. The self-seeking egocentric who has little sincere interest in and concern about the problems of others cannot successfully simulate interest. His insincerity is invariably detected. The employee may be at a complete loss to find any acceptable grounds for complaining about or criticizing his supervisor, but he knows, nevertheless, that he does not like or trust or respect the supervisor.

The Difficulty of Changing Feelings

But the difficulty of adequately disguising one's true feelings is exceeded only by the difficulty of changing them. All of us like to think well of ourselves, to see ourselves in a favourable light, and this self-regard is so important that we are disturbed by events which give us reason to doubt whether we are all we had thought we were. Perhaps we discover that we were more fearful than we suspected and that our behaviour when frightened is scarcely creditable. Or we make stupid errors in judgment or we display obvious moral weaknesses. In the face of these unpleasant facts about ourselves we may take either of two general courses. We may lose in self-respect temporarily and then regain self-respect by the slow painful process of correcting our errors. This is the hard but the most healthy and ultimately satisfying course to take. On the other hand, we may retain self-respect more cheaply by refusing to accept the facts for what they are. We quickly excuse ourselves, we rationalize, we may even project our unsatisfactory thoughts and feelings onto others, we blame others, we take flight in illness. One way or another, we protect our self-respect by defences against truth. These methods of maintaining self-respect are very common, but none the less unhealthy. They preclude the possibility of improvement because we don't recognize the need to change. So we keep on making the same old mistakes. And as the evidences of our blunderings pile up we must man our defences more and more vigorously.

It is easy to see then why the individual who is mentally unhealthy, the one who maintains self-respect by self-deception, is poorly regarded by others and also difficult to change. He is difficult to change because he doesn't dare admit to himself that change is necessary. Intellectually he may be comprehending and flexible, but emotionally, in the area of his basic attitudes and feelings, he is extremely rigid. Such a person can readily grasp general principles and absorb knowledge without being in any fundamental way affected. He is the mean man who extols generosity, the tyrant who praises the democratic spirit, the bottleneck who preaches co-operation, the infallible judge who claims to admire humility.

What a Man Is Vs. What He Does

The outstanding characteristic of the good supervisor is his soundness as a person. He has reasonably high ideals to which he lives up.

He is sufficiently mature to accept the responsibility for his own mistakes. He likes people and enjoys working with them. He has an appropriate degree of self-confidence and self-respect. He is not neurotically driven by fears and hostilities. In brief, he is mentally healthy. As a healthy person he engenders good will and receives respect. Moreover, he doesn't commit the grosser blunders in personnel management because he simply can't. He doesn't feel like being mean, hostile, sarcastic, rude, domineering or callous; so it is unnecessary to tell him not to behave in these ways. But his opposite member, the unsound, unhealthy supervisor, does have these unsatisfactory characteristics and feelings which are not appreciably altered by merely providing him with rules of thumb. Even if he forces himself to follow the rules he cannot make himself feel differently. And employees readily detect the feelings.

Implications for Management

1. The first and most obvious implication is that good supervisor training cannot be expected to make up for unfortunate selection or the lack of suitably qualified persons. So often the problem is not to recognize a promising prospect for promotion, but rather to find any such among the rank and file. But even if the choice is limited, it is perilous to give too little consideration to the soundness of the person because personality defects are so much harder to correct than technical inadequacies.

2. There is no need to revise the opinion that systematic supervisor training is sufficiently advantageous to be regarded as essential. There are, however, good grounds for the suggestion that more is often expected of such training than is reasonable, especially as regards improvement among the poorer supervisors.

3. Supervisor training designed to improve the management of men is currently preoccupied with knowledge to be imparted and specific techniques to be developed. But since the central problem is to effect changes in attitudes and feelings, greater stress might be laid on what to *be* rather than on what to do; on mental hygiene rather than on rules of conduct. Better still, management in this respect might lead as well as point the way!

John Rae: Canadian Economist

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Professor Horne assesses the contribution of John Rae's *New Principles* to theoretical economics and lays claim to this pioneer for Canada.

JOHN RAE was the Canadian economist who, during the nineteenth century, made significant contributions to economic theory. In view of the originality and profundity of his thought and the influence of his Canadian environment in shaping his work, there has been a curious failure on the part of Canadians, as well as others, to recognize him as a Canadian economist, or even as an economist of note.

Rae's Life and Work

John Rae[1] lived from 1796 to 1872. His life was darkened by disappointments and misfortunes which began with his disagreement with his doctoral committee at the University of Aberdeen on the prevailing physiological theories. This event marked the beginning of his dissent from received theories. At twenty-five, he emigrated to Canada, establishing a private school in Williamstown, Ontario, where he taught the children of some of the rich traders of the Hudson Bay Company.

He Opposes the Theories of the Adam Smith School

Prior to coming to Canada, Rae had read the works of Adam Smith and the other political economists, but found their scope and design too confined for his purposes. He had planned, while in Scotland, to write a "true natural history of man." He stated that the "solitude and labour of the Canadian backwoods" caused his inquiries to be "altered in form". He said that the conclusions of Adam Smith and his school were, "on many points, opposed to those at which I had arrived." But it was not until he had restudied the views of Adam Smith and of other European writers of the same school in his new environment in Canada that he

[1]There were two others of note who bore the name John Rae. One was the Arctic explorer, a surgeon in the employ of the Hudson Bay Company. He was a contemporary of our John Rae, and also lived in Hamilton, Ontario, for part of his life. The third John Rae was an economist who wrote, among other books, a *Life of Adam Smith*. All three John Raes were born in the north of Scotland, and were unrelated.

came to a "conviction of the unsoundness of the system maintained in the *Wealth of Nations.*"[2]

His Great Works on Canada Fail

About this time, Rae had embarked on a work on Canada and its relations with the British Empire. He felt, in contrast to Smith and his school, that this relation sprang essentially from mutual benefit. He petitioned Sir John Colborne, Lieutenant-Governor at the time, for aid for the book, *On the Present State and Resources of the Province.* Typically, he stated in a later letter that £100 would have sufficed for him to get the work published, and would "have averted all the disasters of the Rebellion (of 1837) and brought on prosperity."

The work on Canada was never published, nor was the manuscript ever found. Rae contended in a letter that the failure of his great book on political economy to evoke much interest was a bar to getting his great history of Canada published. In view of the protectionist views of Rae, we may perhaps see him as a forerunner of the National Policy of the Conservative Party after 1867. To his interest in the mutual advantages of the relation between Canada and the mother country may be traced the Imperial Conference of 1932 in Ottawa. Of importance to Canadian economists should be the statement of Rae himself in the "Author's Preface" to his *New Principles* that his great work actually arose out of his work on Canada. In attempting to organize arguments to controvert the view of the politicians who believed there was no benefit to Canada or Great Britain from their connection, his work "gradually assumed a far more extended and systematic form than I had at first meditated; and I became engaged in the present attempt to show that there exist great and radical errors in the whole system, sufficient to vitiate very many of the conclusions drawn from it, and from the fallacies introduced by which the doctrines of free trade alone derive their plausibility."

At any rate, in view of John Rae's having lived in Canada from 1821 to 1848, the most productive years of his life in economic thought, and in view of his having produced his great work in this period under the influence of his Canadian environment, it seems strange that A. R. M. Lower did not even mention him in his essay on "The Development of Canadian Economic Ideas."[3] This is particularly notable in view of the stress that Lower lays on environment as affecting Canadian economic

[2]The quotations are from the "Author's Preface" to his magnum opus, dated Montreal, 1833. A postscript was written, dated Boston, 1834, to meet his changed plans re publication in the United States rather than in Great Britain. The full title of the book was *Statement of Some New Principles on the Subject of Political Economy, Exposing the Fallacies of the System of Free Trade, and of Some Other Doctrines Maintained in the 'Wealth of Nations.'*

[3]In J. F. Normano, *The Spirit of American Economics,* New York, 1943. Actually, Professor Lower spends more time with the unfolding of Canadian political views and emphasizes the ideas on economic matters of the political leaders. Adam Shortt and O. D. Skelton are the only native economists that he refers to as having contributed to Canadian views. Normano deals with Rae as an American economist on pages 89-90, relating him to the "American romantics."

ideas. Lower stated that the first native economist and "the first to see the Canadian problem in its own terms" was Adam Shortt.[4] Not only was Rae influenced by his Canadian environment, but he took an active part in it, printing around 1843 an "Essay on the Question of Education, in as far as it Concerns Canada." Even after he had been cast adrift and had become "an exile from the land which I had chosen as my home . . ." but from which "cruel injustice has driven me forth," he still showed interest in Canada.

Last Years of an Exile

About 1834 Rae became headmaster of the Gore District Grammar School near Hamilton, where he taught classics. He was among the first to enlist during the Rebellion of 1837. After his disappointment about the lack of success of his book, his next misfortune was the loss of his school in 1848. The trustees, who were clergymen, closed it, as a graceful way of getting rid of John Rae, probably because of his having become a free thinker. Thereafter he went adrift, finally settling in the Hawaiian Islands where he lived until shortly before his death. Here his fertile mind found new interests, and his articles on "The Polynesian Language", while overlooked at the time, found new life when reprinted as Appendix VIII in Henry Paget's book on *Human Speech.*[5] In 1871 he came to New York on the invitation of an old student, Sir Roderick Cameron. The change in climate so adversely affected him that he died the following year and was buried at Staten Island.

The Partial Rediscovery of Rae

Recapitulating the contributions of Rae, it will be remembered that the occasion for his rediscovery as an original economist of considerable stature was the world-wide discussion of capital inaugurated by Bohm-Bawerk at the beginning of the twentieth century. Unfortunately the rearrangement of the text of the 1834 edition, and its republication under the title of *The Sociological Theory of Capital* tended to bury some extremely penetrating observations on other matters.[6]

Alexander Everett, the editor of the *North American Review,* persuaded Rae to publish his book in the United States. The eminent American protectionist had in mind the possibility of the book's serving as a much required textbook for the protectionist school in the United States. He was disappointed and bewildered by the "new nomenclature", and gave it such a wishy-washy review,[7] recommending the book "to all who feel any interest in political philosophy", that he no doubt discouraged many potential readers. An English reviewer at the same time[8] gave a somewhat more favourable review, mentioning some of the positive new ideas

[4]Ibid, p. 230.
[5]London, 1930.
[6]Charles W. Mixter relegated all but the theory of capital to the appendix.
[7]*North American Review*, Vol XL (1835) pp. 122-141.
[8]*Foreign Quarterly Review,* Vol XV, No XXX, 1835.

in Rae, and at the same time stating that it was to be expected that if America entered the field of contention on Adam Smith she would despise authority, and that in this regard Rae's book fitted the pattern!

Rae's Total Contribution to Canadian Economic Theory

For the purpose of emphasizing the importance of Rae, we will list his main suggestions:

(1) There is his case for Protection. Here he used a homely argument, involving two Canadian farmers and a "philosopher" (Smithian), who contend about the principle as stated by Smith; that is, "the principle of the best alternative."[9] His argument here is the infant industry one with stress on the saving of the expense of transportation. J. S. Mill later approved of the infant industry principle, giving the credit to Rae, at the same time attacking Carey's argument for protection on the ground of the saving in carriage cost. The point was that Rae had in mind the idea of economic waste when transport costs are being paid on foreign imports that could be as economically made at home, once the industry had had a chance to become established.

(2) Rae developed a theory of government interference on the ground, as stated in the title of the first book in the original edition, that "Individual and national interests are not identical." Here there is an indication that he had the idea that parsimony by itself was not sufficient for accumulation. He said the stock of capital was increased not only by saving, but by invention, by whatever promotes knowledge and skill, and by whatever prevents the dissipation of funds in luxury. He stressed the difference between "acquisition" (simple transfers of wealth) and "creation" (production of new wealth not previously in existence). Since invention is creative, it was suggested that the legislator should bend his best efforts to the encouragement of it. Here. we might suggest, is to be found the kernel of the modern view: individuals can save, holding assets, but unless new profit opportunities for investment appear there will be no accumulation, no addition to capital instruments.

(3) Schumpeter's theory of economic development was foreshadowed in Rae's conception of progress in the industrial arts, the growth of economic institutions (for example, banking), and the expansion of our whole material civilization as but particular phases of the general sociological principles of invention and imitation.[10]

(4) In Rae's letters to Mill,[11] written around 1863, he presented a theory of "the effective desire of offspring" as a modification of the Malthusian doctrine. Rae stressed social factors and the way in which

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[9]Boulding, *Economic Analysis,* N.Y. 1938. Refer to *The Sociological Theory of Capital* pp. 423-430.

[10]See C. W. Mixter, "Bohm-Bawerk on Rae", *Quarterly Journal of Economics,* Vol. 16, 1901-02.

[11]*The Economic Journal,* 1902, pp. 111-120.

they impinged on the social outlook of the individual as the determinants of population, rather than the Malthusian "assimilation of man to the lower animals." Here we have a definite indication of the sociologists' "cultural conflict" as the important explanation of such phenomena as the decline of population in a peaceful and fertile land, like that of the Hawaiian Islands.

(5) Rae's additions to the economic vocabulary are worthy of note. He coined the word "instruments" for all material objects altered by man to adapt them to his future wants. He foreshadowed Carey in including land in "instruments". The reviewer in *The Foreign Quarterly Review* was interested in Rae's including immaterial products in his idea of wealth.

(6) Rae argued against Smith's contention that division of labour gives rise to invention. He contended the reverse was the case. Actually, of course, the two are interdependent, but Rae's reversion of Smith's causation was probably useful in making this fact clear. Of interest here is Rae's view that invention leads to division of labour and accumulation, as opposed to Smith's stress on parsimony as the source of accumulation. For Rae division of labour is a result, not a cause of progress.

(7) Rae's discussion of methodology must be mentioned.[12] His contention was that Smith's method was essentially system-building as opposed to the inductive method. In showing preference for the scientific inductive method, and in attacking the Smithian system for proceeding on loose and popular principles, and then elevating these principles to the status of demonstrative axioms, Rae indicated the later interest of the Historical School. As recently as 1937, one Helmut Lehmann published a book dealing with Rae's methodology.[13]

(8) Certainly the insight that was shown by his discussion of the importance of "vanity" in consumption, and his coupling of "conspicuous" and "consumption"[14] in anticipation of Veblen is remarkable. He even makes excursions similar to those of the later writer into the realm of anthropology in illustration of the point. Typically, examples are drawn from the case of the Indians of Canada. J. S. Mill drew on Rae in recommending commodity taxes on "those classes of luxuries which have most connection with vanity and least with positive enjoyment."[15]

(9) Rae's discussion of banking under the heading of two main functions: (a) discounting bills, (b) the system of bank credits, seems modern in tenor. There is evidence that he understood the nature of modern banking in monetizing the assets of the community.[16] Of interest

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[12]The discussion of methodology is in Article V of the appendix of the Mixter edition of the *New Principles.*

[13]Helmut Lehmann, *John Raes Werk, Seine Philosophischen and Methodologischen Grundlagen,* Leipzig, 1937.

[14]*The Sociological Theory of Capital,* p. 245.

[15]J. S. Mill, *Principles of Political Economy,* Ashley ed., 1909, beginning at p. 870.

[16]Op. cit. pp. 311-327.

is his discussion of how the traders overcame the scarcity of cash in Upper Canada by the use of book credits. He saw banking as having the capacity for developing the benefits and remedying the evils of the system of credit. He dwelt at considerable length with approbation on the Scotch banking system.

(10) Rae's contribution to the Theory of Capital is familiar and has gained an important place in most histories of economic thought.[17] His "effective rate of accumulation" also found its way into J. S. Mill's *Principles*. Mill quoted at length from Rae the examples from different ages and countries of differing effective desires for accumulation.[18] Mixter had originally been struck by the similarity between the views of Rae and those of Bohm-Bawerk. But, in his article in 1901,[19] he brought out the differences between the earlier and the later writer suggesting that the former was actually superior to the latter, in that he brought in the importance of invention, ". . . the active forces — the creation — of profit and progress." Rae saw the positive significance of time as clearly psychical rather than technical.

Conclusion

In conclusion, let us repeat that this early Canadian economist had a great and original mind. Professor Lower's statement that so far no wide-ranging works in economics have appeared from Canada, and that "the first Canadian book on theoretical economics . . . appeared in May, 1942"[20] should be reconsidered. Was not the *New Principles* of Rae, appearing more than 100 years before, the first? "If Rae's book had been studied carefully when it appeared, economic science might have been much further advanced than it is at present."[21] The general diffuse nature of his writing, his tendency to bury theory in entertaining descriptive material, and his penchant for plumbing each subject to its uttermost depths should not detract from an appreciation of his many original ideas. This pioneer is invariably characterized as either a Scotch or an American economist. The fact is that he must be regarded as an early Canadian economist, who was at least an anticipator, if not an originator, of many later important theoretical developments. In view of the evolution of his ideas and their presentation in *Statement of Some New Principles on the Subject of Political Economy* occurring on Canadian soil, with the content admittedly altered and shaped by the impact of his new Canadian environment, it is time that Canadians laid claim to him as a Canadian economist.

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[17]An important exception is Gide and Rist's volume, where no mention occurs of him.

[18]Op. cit. pp. 165-173.

[19]*Quarterly Journal of Economics,* Vol. 16 (1901-02) pp. 385-412.

[20]Op. cit. p. 240.

[21]Lester W. Zartman, *Annals of American Academy of Political and Social Science,* Philadelphia, 1906, in a review, pages 442-444

Who Gains by Resale Price Maintenance?

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People generally think of resale price maintenance as a simple device which shields retailers from price competition. Without denying this concept, Mr. Hamilton discusses other related aspects which complicate the problem and render its solution a matter of general concern.

The attention of the Canadian business community has been focused in recent months on the relationships between business and the government by the appointment of a committee to study the Combines Investigations Act and make recommendations as to its revision. One vexatious question facing the committee is that of deciding what changes, if any, should be made in the laws, or in the administration of the laws concerning resale price maintenance.

What Resale Price Maintenance Means

Where resale price maintenance exists all consumers are asked to pay the same price for a particular branded article no matter what store they patronize. Under the formal procedure the manufacturer sets the price or minimum price and requires his dealers to sign a contract to the effect that the price will be maintained. There are a great many informal practices, involving no contract, which tend toward the same result — uniform retail prices on a considerable proportion of our country's goods.

Whether the resulting limitation of competition is good or bad has been a matter of controversy for years. In spite of the fact that the criticism of resale price maintenance has been considerably superior in quality, if not in quantity, to its support, the practice has persisted and spread for three main reasons. First, among those in favour of resale price maintenance are the small business men whose collective political power and public support are both enormous, while the opposition comes mainly from big business and economists both of whom have limited public support and almost no political influence. Secondly, resale price maintenance is not always doing harm, and in the view of the public has some good points, the most important of which is the comforting thought that the housewife can on certain articles shirk the duty of shopping around for the best price, serene in the knowledge that the cost is the same everywhere. She can be a thrifty housewife without much effort.

She puts her faith in free enterprise and the laws of the land to keep the prices where they ought to be, seldom realizing that she is the force that is supposed to control prices and that the laws can at best only prevent business men from combining against her. Thirdly, if resale price maintenance be judged wholly bad, there remains the difficulty of disposing of it. The passage of the proper law is hard enough politically if the corner druggist and hardware man is against it, and furthermore, resale price maintenance can thrive surprisingly well without recourse to law and probably almost as well in defiance of the law.

This article is not a legal treatise; law is mentioned incidentally. The purpose is to clarify the issues in the hope that a realistic solution may be found and when found be acceptable to the business community and the public without whose active co-operation no solution is possible.

To many who examine resale price maintenance superficially there is no real question of right or wrong. Their condemnation is based on the argument that if the retail price of an article is the same throughout the economy competition is to that extent diminished. However, the fact that competition is diminished is not, of itself, sufficient reason for condemning a business practice. Competition has proven too ruthless in its treatment of individuals, groups, and nations to be permitted to remain the only determinant in economic affairs. In foreign trade, our government has used tariffs and international trade agreements to limit competition for the benefit of Canadians. Internally, there are subsidies for depressed sections of the economy, minimum wage laws, patent rights and labour unions all of which limit competition, but at the same time are considered to be in the public interest. The laws of Canada seem to indicate the need for qualifying phrases, even if interpretation often does not.

The Combines Investigation Act states that "everyone is guilty of an indictable offence who is a party to, or knowingly assists in, the formation or operation of a combine, which means a combination having relation to any commodity which may be the subject of trade or commerce, having or designed to have the effect of . . . fixing a resale price *against the public interest.*" Phrases such as "unduly to prevent or lessen competition", "unreasonably to enhance the price" and "against the public interest" are typically associated with the relevant sections of Canadian law examined in preparing this article. These phrases are mainly responsible for the businessman's uncertainty as to the legal implications of his proposed actions in regard to price maintenance. All judges have a sufficient knowledge of economics to decide whether in a particular case resale price maintenance lessens competition and enhances prices, but whether competition is unduly lessened or prices unreasonably enhanced usually depends on evidence that is not easy to obtain and extremely

difficult to evaluate in relation to the social, economic and political requirements of the moment. Deciding what is "against the public good" involves consideration of the various sections of the public, their long and short-run economic good (which involves, among other things, the preservation of the nation's capital) their social good, and national security, any of which may outweigh economic considerations. Since all of these factors change in importance with the changing times, confusion is inevitable.

Purposes Served by Resale Price Maintenance

Whatever meaning may have accrued to the laws on resale price maintenance through precedent and practice it is clear that they were intended to be flexible instruments capable of being used to tolerate or encourage practices in one set of conditions and to restrain or eliminate the same practices in another set of conditions. The record shows that resale price maintenance has been used to cope with situations that seemed serious enough to warrant protecting some people at the expense of the public at large for the common good.

The first such purpose of resale price maintenance was to give relief to manufacturers who complained that the use of their products as "loss leaders" was unfairly damaging their reputations with the public and hurting their sales. "Loss leaders" are popular, nationally-advertised products sold below cost to attract customers in the hope that they will purchase enough other merchandise at the regular price or even at a higher-than-usual price to yield a larger net profit to the retailer. Whether actual damage was done to manufacturers in this way has never been established but under competitive conditions the wrath of dealers who do not wish to sell at a loss and can't sell at a profit if a nearby competitor is cutting the price below cost, most certainly can damage a manufacturer's sales. The recourse of cutting off supplies to the price cutter is feasible only when demand is very insistent or when all the manufacturers of the item act together — a hard thing to arrange without breaking other laws.

Resale price maintenance was promoted as a solution to this problem. In considering the future of resale price maintenance it should be recognized that there are other ways to deal with selling below cost. Where costs can be determined a law specifically forbidding sale below cost can be quite effective.

Later, resale price maintenance was promoted by retailers as a protective device in times of severe depression. It was reasoned that if all retailers had to sell at the same price, every store would secure a share of the rapidly diminishing volume of sales because of proximity to customers and goodwill, factors that were threatening to become valueless in the face of panicky price-cutting by dealers in financial distress. During

the great depression of the thirties organized groups of retailers were able to force manufacturers to adopt resale price maintenance by threatening to boycott their merchandise.

The Pepsodent case is a famous example. Pepsodent opposed resale price maintenance and was effectively boycotted. Pepsodent tooth paste disappeared from view in most of the drug stores of the United States. Complete support of resale price maintenance which included a $25,000 donation to the "Fair Traders" war chest brought Pepsodent products back where the public could buy them. The retailers' campaign for legal protection for "Fair Trade" received public and governmental support. The paramount need of the times was to preserve employment from further decline at whatever cost to the nation. Those that had jobs had to subsidize the rest by paying more for goods. Resale price maintenance probably mitigated the distress of the great depression and could be justified on social grounds if it prevented the failure of many small retailers even though the result was the maintaining of prices above their economic level. The supply so exceeded demand that at times the economic price was absurdly low. In times of great distress, politicians are expected to do something. One of the things they did was to encourage resale price maintenance for their own good politically and probably for the common good.

With the growth in importance of the department store and the advent of the chain and the supermarket resale price maintenance was ardently supported by organizations of independent retailers who feared they would be ruined if price competition was not limited. Resale price maintenance made great gains everywhere. In the U.S.A. the Fair Trade Laws spread to most states and, by the Miller-Tydings Act, resale price maintenance was rendered safe under the Anti-Trust laws. It is now apparent that the small independent merchants not only have survived the invasion of the newer types of store, but have greatly improved their methods, broadened their product lines, improved their display practices and, in general, have adopted what they could of the new retailing practices and made up any remaining disadvantage by exploiting the natural advantages of being small. Resale price maintenance gave them time to make the adjustment and although the development of the low-cost, limited-service type stores was delayed in order to "save the small businessman from extinction" that development was probably more orderly as a consequence.

In these three situations resale price maintenance had a net result that was probably good. It is certain that situations will arise again when some legal machinery which will permit or encourage resale price maintenance or something like it will be needed to alleviate distress. If our laws are altered, flexibility should not be sacrificed to clarity.

Resale Price Maintenance in Normal Times

Resale price maintenance is hard to justify under normal conditions. Normal, in this case, means anything between severe depression, when maintaining employment and alleviating distress are the first considerations, and boom conditions when inflation is the main threat.

Most of the able criticisms of resale price maintenance appear at times when competition is returning or already active and is not resulting in the decline in prices expected by the public. In the period between Christmas, 1948, and the Korean invasion, when the sellers' market began to weaken in many lines, there were about a dozen American law suits mentioned in business periodicals. In most of these cases the courts ruled against the manufacturer. Several judges expressed the opinion that resale price maintenance was unconstitutional and contrary to the public interest. Canadian cases of manufacturers suing to enforce resale price maintenance contracts are extremely rare, probably because everyone seems certain that such a suit would fail; but the volume of criticism rises and falls as competition waxes and wanes.

Profits depend on volume and margin. Because the manufacturer does not sacrifice any of his profit margin if retailers cut prices, and usually increases his volume, the manufacturer is often quite content to see his product sold at less than the resale price. However, pressure for correction of the "unfair practice" of price-cutting which is "threatening orderly distribution" may be applied by some of the retailers.

The manufacturer could solve the problem by cutting his price but that would cut into his profit margin and the compensating increase in volume might not materialize if other manufacturers in his line followed suit with price reductions too. This could lead to a price war. Price wars are not won by the company having the best products, the best service, or the lowest costs of manufacture and distribution. Price wars are won by the company with the most cash. Thus the manufacturer hesitates to choose this alternative. The other alternative is stopping sales to the offending dealer or suing to enjoin him from setting price below the contract level. Either way the manufacturer suffers, but he suffers more if he loses all his dealers except the price cutter. He remembers Pepsodent!

In spite of the difficulty of enforcing resale price maintenance by recourse to law the practice can and sometimes does flourish to the point that it is the dominating pricing factor in entire industries. In order to get adequate distribution, each manufacturer finds he must set prices that guarantee the same retail margin that other manufacturers allow and price competition is virtually eliminated at both the retail and manufacturing levels. Of course this can come about through collusion between manufacturers, in which case the law steps in to punish the miscreants with some unfavourable publicity, an expensive lawsuit and a trivial fine.

Resale price maintenance is blamed in these cases as the instrument by which the conspiracy is put into effect.

Where price competition is suppressed in a competitive situation business will compete in other ways. The most common way is on the basis of service. Since the optical goods industry established its elaborate and effective system of resale price maintenance there has been a noticeable improvement in the service and appointments of opticians' shops. There may well be a place for a store where glasses could be obtained in less princely surroundings at a lower price. Where the public can choose between low price with limited service and a higher price with delivery, credit and personalized service, both types of outlet may thrive in the same community and have a restraining influence on one another, as in the food industry today. Resale price maintenance, if widespread enough, removes that restraining influence. Dealers must compete on expenses since they can't compete on prices.

Another bad effect of resale price maintenance is its tendency to result in a ludicrous profusion of retail outlets of the same kind. Filling stations are so plentiful in Canadian communities of the writer's experience that they seem likely to become the dominant architectural feature of the urban scene. This aspect of resale price maintenance could eventually lead to the control of the number of entrants into a retail field by its existing members on the basis of conformity in the matter of price, service, race, creed or color of hair, but certainly not on the basis of ability to compete which is the criterion that can best improve our standard of living. Dean Ewald Grether of the University of California Business School points out that the Malthusian principle of population-increase-to-the-subsistence-level is at work in Fair Trade fields. One quotation from the American journal, *Drug Trade News,* written by an official of a British trade association illustrates Dean Grether's point and highlights the conditions that are so often referred to by critics of resale price maintenance.

> "In our country all proprietary medicine vendors have to be licensed and we woke up to the fact that the number of those vendors was increasing at the rate of eight to nine thousand per year. It is a fact that owing to the success of the price maintenance movement initiated . . . thirty-eight years ago, . . . the 20 to 30 per cent profit which those articles yield has proved a tremendous temptation to other shopkeepers to invade the proprietary medicine business — the success of our own war to prevent price cutting within our own ranks has produced an army of competitors. . .
>
> "My own organization decided that it would be reasonable to ask manufacturers of proprietary medicinal and surgical goods

> to restrict their channel of distribution to the chemists' trade. We ask the proprietors of these articles to sign an agreement for seven years, undertaking only to sell these goods through chemists. In return, we, on behalf of the chemists, undertake to give those goods . . . the utmost possible sales assistance. . . . On the other side, we ask all our members to refrain from giving window, counter, or other displays of any kind to the goods or advertising material of any article within our specification which is not upon our list."

Factual and reliable evidence as to the extent and cost of resale price maintenance in Canada is not available. Some studies have been made in the U. S. A. One, which was quoted in the January, 1949 issue of *Fortune* is offered as an example.

> "A recent study of 117 branded drug items showed that 35 cost about a third less in Washington than in Maryland, 38 about a quarter less, and 29 about a seventh less. A comparison of free trade Missouri and 'Fair Trade' Illinois indicates a similar situation."

In the same issue *Fortune* quotes an estimate for 1948 of roughly 5 billion dollars or upwards of $12.00 per family as the cost of resale price maintenance. These figures however may be distorted because of the possibility that manufacturers are cutting prices below the economic price and possibly below cost to retailers in "free trade" states to maintain their position against the possibility of universal Fair Trade. Any figures are welcome in a controversy where the proponents typically rely on emotional appeals and the opponents on economic theory.

On the other side, a comparison of the prices of 7,334 drug items between 1939 and 1947 was conducted by the National Association of Chain Drug Stores which showed that these items rose in price only about 3% over the period involved which is very modest indeed compared to prices in other industries and prices in general. This study, like so many "then-and-now" comparisons, could be misleading because of the likelihood of the products' changing for the better over the period. A bottle of iodine is probably the same commodity now as it was twenty years ago. Today's car is a much better article than the car of twenty years ago. Drug products do not improve so much as they are replaced by more effective medicaments with different names. Also at any one time, many of the drug items in a large sample are bound to be new and extremely expensive to produce. If penicillin were one of the items included in the sample it would exert a downward influence on the figures for it has become much cheaper to produce through the efforts of scientists and chemical engineers. The study proves how well prices have

been held down on these particular drug items but is not unassailable as proof of the usefulness of resale price maintenance.

The available evidence does seem to be overwhelmingly against resale price maintenance in quantity of literature, quality of argument and the integrity of approach to the subject. No one has, except in the most general terms, given any indication of the degree to which price maintenance is practised in Canada, nor any estimates as to its cost. These are hard facts to acquire, of course, but a more realistic appraisal of the net effect of resale price maintenance requires such information.

Resale Price Maintenance Under Inflationary Conditions

So far consideration has been given only to the effect of resale price maintenance in preventing prices from falling to their economic levels when goods are plentiful. When goods become scarce, relative to demand of course, few retailers are likely to cut prices except to move slow merchandise or reduce inventory through fear of a change in conditions. This accounts for the diminished interest in resale price maintenance after Korea. When inflationary forces are strong, resale price maintenance can act as an instrument of control over rising prices and curb profiteering.

Everyone is familiar with the lush profits earned by car dealers after World War II. Most people are also aware that the automobile manufacturers exercised great restraint in setting car prices during this period; and by issuing price lists and striving to hold dealers to them, they relieved inflation pressures considerably. Automobile manufacturers made large profits as it was, but the demand was so insistent that they could certainly have doubled or tripled profits by raising prices two or three hundred dollars per car without reducing effective demand appreciably. It is also certain that had they done so most of the profits would have gone into higher wages. The likelihood of the larger auto manufacturers being broken up by court action under the Anti-Trust laws would have been increased also. Whatever the motive for restraint, resale price maintenance was partly responsible for whatever degree of inflation that was averted.

This restraining influence is at work over a very wide range of products throughout the economy. Its effect cannot easily be measured in terms of dollars. However, reason suggests that wherever a manufacturer seeks to maintain a price that is lower than what the traffic will bear, and wherever the public knows what the resale price is, there is a downward pressure on prices in an inflationary period.

The retailer hesitates to charge more than the resale price for fear of hurting his sales. If all of the items in a dealer's stock were in short supply at the same time there would be no loss of business if the price were raised to the supply-demand level. But shortages aren't like that.

Only some of the items in any store are scarce at any one time and the dealer can be sure that some of his customers will shop around a bit before paying more than the manufacturer's suggested price — and that if a store is found that will supply the wanted article at the "right" price the customer is likely to do the rest of his shopping there too. The dealer who raises his price above the suggested price also faces the possibility of having his supply cut off when his action is reported to the manufacturer. When the manufacturer can sell his entire output without satisfying the demand the loss of a few dealers is no worry to him. Public resentment against profiteers — which is the name given to people who practise economics in times of scarcity — is another factor tending somewhat to restrain retailers from exceeding the maintained price. There is no difficulty in informing customers about the price manufacturers are trying to maintain as long as resale price maintenance is not against the law. Advertisements, dealer display material and packages all can show the price. The public too can be counted on to play its part.

The likelihood of manufacturers' setting a resale price below what the market will bear is not so remote as it appears at first glance. In the first place there is a time lag between the price decision and the actual sale. Packages have to be printed in large lots, advertising has to be scheduled ahead, and dealer helps have to be introduced into the nation's stores. For this reason the resale price is always out of date and, in inflationary periods, always low.

Secondly, business has an inherent compulsion to produce and sell as much as possible. This compulsion is often stronger than desire of its owners that business be as profitable as possible, and in the case of big business especially, more likely to influence prices. The separation of ownership and management in modern business is responsible for this curious situation. Business managers depend largely upon their salaries for their income. Salary increases follow greater responsibility, an expanding business makes for greater responsibility, and the surest formula for expansion is to set prices that will move everything, produce a good backlog of orders, and show a profit that is large enough to provide or encourage the investment of the capital needed for expansion.

The desire of business managers to improve their living standards and gain the respect and admiration of the community; the necessity for forward planning in regard to materials, manpower needs and prices; all combine to influence manufacturers to set a price that is sure to move the budgeted volume — and that price tends to be lower than it might be so long as inflation continues. In the case of the largest enterprises and those which approach monopoly there exists the additional factor that, while a slight error on the low side in setting prices will produce only an increase in the already general outcry for more production, an

error on the high side might produce an unconscionable profit and bring the "trust-busters" down on them with disastrous results. It is ironic that the monopolies and near-monopolies are so often called upon to make the "H" bombs, the guns, and the tanks whose production is an important part of the inflationary pressure.

Should Canada Have Fair Trade Laws?

To sum up — resale price maintenance encourages and perpetuates inefficiencies and higher prices under all business conditions except the extremes of depression and boom. The good that has been accomplished through resale price maintenance in times of national emergency could probably have been achieved by other means less prone to abuse and less difficult to dispose of after the emergency was over. The effect of resale price maintenance in retarding inflation offsets to some extent the bad effects in normal times. The effectiveness of the proponents in gaining public sympathy and political support exceeds the effectiveness of critics who typically produce the best arguments and the best evidence in support of their contention that resale price maintenance is bad and should be done away with. This rough balance is sure to result in pressure for laws making resale price maintenance easier to enforce and laws banning the practice altogether.

Any further protection of resale price maintenance would certainly be bad. The existing laws, confusing as they are, permit the practice to flourish if that is desirable. More important still, the uncertainty of the existing laws discourages the setting of prices so high that price-cutting would be inevitable, for the price-cutter cannot be controlled except by the boycott which may hurt sales. Because conditions keep changing, the laws concerning business should be kept flexible. The changing of laws is a very slow process, especially laws which directly benefit a well-organized, politically-powerful minority when the change is likely to reduce the incomes of the members of that minority or increase their business risks. The adoption of Fair Trade laws similar to those in the United States would contribute to the difficulty of solving the larger problem of making free enterprise work at a time when powerful forces are bent on its destruction.

Should Resale Price Maintenance Be Outlawed?

The opponents of resale price maintenance are likely to demand that resale price maintenance be positively forbidden by law. Such a law would of itself be only partially effective in reducing price rigidity at the retail level, and would raise other questions.

In the first place, the informal practices would continue or even increase. Manufacturers, especially small and medium sized ones, with or without pressure from retailers, could still "suggest" prices and cut off

supplies to recalcitrant dealers. Organized groups of dealers, without leaving much evidence, could use the boycott to encourage manufacturers to "suggest" prices that left room for a comfortable margin and could discipline member retailers effectively.

To withdraw the existing right of manufacturers to choose their retailers and to drop unsatisfactory ones would be an apparent solution, as would the passage of laws barring retail trade associations. Both of these solutions are fraught with danger to the public good that possibly exceeds the danger of resale price maintenance.

Apart from obvious credit considerations, efficient distribution of many products is impossible unless the manufacturer is free to set up certain standards for his dealers and drop dealers who will not or cannot comply. A full line must sometimes be carried so that the customer can get complete service without running from store to store. Installation and repair services must be adequate and repair part stocks must be maintained. In the case of products whose properties are not generally known to the public the manufacturer must ensure that no untrue representations or misleading statements are made by dealers or the product will be put to uses which are either dangerous or which will cause the product to break down with attendant loss of good will and sales. These rights must be guarded if the public is to be well served. At the same time it is clear that as long as the manufacturer can drop a dealer for legitimate reasons it will be difficult to prevent him from dropping dealers for an unco-operative attitude with regard to prices, and equally difficult to prevent the dealer from applying pressure.

Retail trade associations are also vital to the public good. They can and do maintain quality standards through jointly financed research and dissemination of information to member stores concerning these standards. They also can ensure adequate professional competence and trade skill in such fields as drugs, dental supplies, optical equipment, and many others. Reports on typical operating expense ratios, improved inventory control methods, and better merchandising practices are typical of the services trade associations perform for their members; and all of these can result in lower distribution costs and lower prices for the common good. The abolition of trade associations would certainly make it more difficult for retailers to maintain uniform prices but the public would lose the benefits of the good work done by these organizations.

No such drastic action is likely. Trade associations are relatively few in number and therefore not impossible to police. One of the few things that is clear about the legal picture is that collusion among retailers or their associations to enforce resale price maintenance among their members or impose it on the manufacturers in their industry is detrimental to the public interest. The Proprietary Articles Trade Association was disbanded in 1927 after a Combines Investigation Act Report pre-

sented evidence of this kind of activity in the P.A.T.A. Supervision is not easy — there is always the telephone and the informal visit — but it is not impossible.

Private branding has acted as a counteracting force to resale price maintenance: consideration of the one problem should include study of the other. If the manufacturer of a nationally advertised brand cannot dispose of his entire output at the maintained price he can sell the surplus to large retail organizations at a price below that paid by his regular dealers. These articles are labelled with the retailer's brand and sold at lower prices. Modern accounting is quite equal to the task of proving that no discrimination exists where the article carries a different brand. Large retail organizations maintain testing laboratories and are constantly on the lookout for products of good quality and low cost. Over the years many retailers have built considerable consumer loyalty to brands which during the same period have been affixed to the products of many different manufacturers. The result, of course, has been to exert a downward pressure on prices. If the national advertiser tries to maintain too high a price he finds himself selling too much to the private branders at a very small margin and he must either curtail production (which is not feasible if there is competition at the manufacturing level in his industry) or lower his maintained price.

On the other hand private branding increases distribution costs since there is a duplication of advertising effort, an increase in retail inventory investment, a greater selling effort because of the necessity of convincing the customer that the alternative product is really "just as good and less expensive." Higher costs mean either higher net prices or lower net profits; either event curtails the nation's supply of capital. However, the net effect of private branding is unquestionably good.

If the outlawing of resale price maintenance does result in significantly greater price competition between retailers on nationally advertised items, private branding will tend to be limited to the products of manufacturers who lack the means or desire to establish their own brands — a result in the common good. If, as is much more likely, resale price maintenance is only one of several forces tending towards price rigidity at the retail level, then private branding will continue to act as a useful force tending always to reduce prices and improve quality.

The delicate position imposed on our large manufacturers by the conflicting demands of our society would be rendered more delicate if resale price maintenance were outlawed by a change in our present laws. Large companies, and even those who are the sole producers of many of their lines, are often low-cost producers. Sometimes this is due to efficiency and sometimes to the fact that the optimum-sized production unit or combination of production units is so large that only one or two such

companies can be maintained by Canada's domestic and export market. Sometimes large companies have an overwhelming cost advantage owing to a patent or a secret process. Sometimes too, the cost advantage may be due to incorrect allocation of joint costs or the improper distribution of expenses to the various products in the company's large line. Correct allocation of joint costs is nearly always impossible, and the distribution of overhead is a matter of choosing the best of about a dozen standard methods, all of which are patently unfair as any department head will tell you. Thus the cost advantage may be laudable or blameworthy; in either case public opinion is more potent than evidence which is necessarily unconvincing. Whatever the cause of the cost advantage, the large companies must be very careful to set prices that will permit some of their small competitors to exist, move the budgeted volume (and yet not create a clamour for increased production), and produce a good but not exorbitant profit.

Killing off competitors by setting too low a price raises doubts about the bookkeeping system. Charging a high enough price to limit consumption so as to leave room for the competitors looks very much like limiting production in order to charge a high price — a monopoly practice forbidden by law. Making a profit which, when expressed in terms of percent-of-sales or return-on-investment is greatly above the general average is equally dangerous. The laws concerning monopoly practices are just as flexible as those concerning resale price maintenance and fully as capable of being used to fit the needs of the hour — real or imaginary.

Resale price maintenance helps large companies to control prices which must not be allowed to find their economic level for fear of bringing about the destruction of either the small businessman or the very large corporation, both of whom are definitely, in one way or another, in the public good.

If resale price maintenance were expressly forbidden by law, the price contract, the published retail price list, advertisements and display material containing reference to retail prices and incriminating correspondence would all disappear. The smaller manufacturers and retailers could achieve a high degree of resale price maintenance by informal means but big business would comply with the law.

The vast number of people who would have to be informally; *i.e.,* secretly, contacted and appraised of each new price, alone presents an almost insuperable difficulty. Other factors of equal importance which will guarantee the compliance of "Big Business" are the difficulties involved in decentralizing authority to the required degree and the fact that it is easier to watch a score or two of large companies than a thousand score of small ones. When it is recalled that whatever good resale price maintenance may do is usually done as an instrument in the hands

of the larger companies, the need for a better solution than merely passing a law against resale price maintenance becomes apparent.

Conclusion

This examination of two extreme solutions leads to the conclusion that resale price maintenance should not be given positive legal protection under which it could expand without restraint and be difficult to check if events proved it to be bad. On the other hand, changing the law to make resale price maintenance illegal would limit its use to those who were able and willing to operate secretly. The more responsible companies would be prevented from using resale price maintenance in socially useful ways and the less responsible companies would not be prevented from using it in harmful ways — although their task would be made more difficult and dangerous.

The problem of resale price maintenance is only part of the larger problem of determining what part competition should play in our economy. The solution, when found, will not succeed without the co-operation of business and the public. The time and cost involved in the investigation and prosecution of a single case renders effective control by government action impossible. In order to gain the co-operation of business the law must be more widely understood than it is today. Ambiguous terms are necessary in order to preserve the flexibility required to deal with changing conditions, but some way should be sought to explain the *intent* of the law.

The public can contribute to the preservation of competition as a price determining factor only if they know what the laws are trying to achieve. If the public is informed it will co-operate, for the public has the most to gain!

BOOK REVIEW

BUSINESS CYCLES—THEIR NATURE, CAUSE, AND CONTROL. By James Arthur Estey. 2nd ed. New York: Prentice-Hall, Inc., 1950. XIV, 527 pp. $4.50.

This edition of a widely used college-level text brings up to date the historical and descriptive matter, and takes account of recent discussions and developments particularly in respect to problems of monetary and fiscal policy. Satisfactory as a text because of its clear, concise treatment and the balance it has achieved in the three aspects of the subject (as indicated in the title), this book will serve well the businessman who is looking for a reasonably thorough and readily understandable survey of the major writings in the field of business cycles.

Part I, dealing with the statistical aspects of the subject, discusses first the several movements that may be found in a time series of data, and illustrates the method by which the cyclical factor may be isolated by removing seasonal variation and long-term trend. The phases of the business cycle are discussed, and studies that have been made of the duration of cycles are examined. One chapter is devoted to the economic changes that take place as the business cycle progresses from phase to phase, and another to the records of business cycles as revealed in such well-known indexes as the Federal Reserve Index of Industrial Production. After studying the great depressions and the war cycle, Part I, like the other sections, concludes with a list of suggested readings for the person who wishes to inspect at first hand the work of leading students of the business cycle.

Part II, taking up the causes of cyclical fluctuation in business activity, consists of ten chapters, including a summary chapter. Because the forces responsible for cyclical fluctuation are complex, the explanations which have been advanced are numerous. The author has attempted to develop the more important of these explanations in the following classifications: (1) real causes, (2) psychological causes, (3) monetary causes, and (4) causes associated with variation in saving and spending. The explanations advanced by those who have made a special study of the business cycle are by no means in agreement, and in presenting the pros and cons the author permits his reader to view the field of business cycle theory from a fairly objective vantage point. The concluding section of this part deals largely with the analysis of John Maynard Keynes.

The evils which are inherent in business fluctuations — unemployment, loss of income, *et cetera,* have given impetus in recent years in democratic countries to the seeking of means of reducing cyclical fluctuations. In Part III the author turns his attention to the problem of stabilization. Some of the plans discussed involve action on the part of businessmen themselves; others are based on governmental action. The businessman who must operate within an economy which is being directed more and more by governmental authority will find it helpful to understand what means of stabilization are at the government's disposal, and the relative effectiveness of the various means.

—BRANT BONNER